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School of Law

LLM Thesis on:
Issues of Expropriation: The Law and the
Practice in Oromia

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Table of Content	Pages
Acknowledgement.....	iv
Abstract.....	vi
 Chapter One	
1. Introduction	1
1.1 Background of the Study.....	1
1.2. Statement of the Problem.....	2
1.3. Research Questions.....	3
1.4. Literature Review.....	3
1.5. Objectives of the study.....	7
1.6. Significance of the Study.....	7
1.7. Methodology of the Study.....	8
1.8. Limitation of the Study.....	9
1.9. Structure of the Study.....	10
 Chapter Two	
2. Land Tenure Security and Rights of Land Users in Oromia Regional State	11
2.1 Conceptual Framework for Rural Land Tenure and Tenure Security.....	12
2.2. Overview of Land Tenure Policy in Ethiopia.....	14
2.2.1 Pre-1974 Period.....	15
2.2.2 The Derg Period	16
2.2.3 Land Tenure System since 1991.....	17
2.3 Rural Land Tenure Security and Rights of Land Users in the Oromia Regional state.....	21
2.3.1 Proclamation No.56/2002.....	21
2.3.2 Proclamation No.70/2003.....	24
2.3.3 Proclamation No.130/2007.....	24
2.3.3.1 Access to Land.....	25

2.3.3.2 Rights and obligations of Rural Landholders.....	26
a) Land Use Rights.....	26
b) Obligations of Rural Land Holders.....	29
2.3.3.3 Impact of Registration and Land Titling on Tenure security.....	30
2.4 Limitations of Current Rural Land Use and Land Administration Laws.....	33
a) Redistribution of Land.....	33
b) Using Land Use Rights as Collateral.....	34
c) Restrictions on Inheritance.....	34
d) Restrictions on Leasing Land.....	35
e) Rural Land Valuation and Compensation	35

Chapter Three

3. Expropriation and Compensation: An Overview of Conceptual Framework.....	38
3.1. Expropriation Defined.....	38
3.2. Public Purpose Requirement for expropriation.....	43
3.2.1. Definition.....	43
3.2.2. Public Purpose as a limitation on the power of Expropriation.....	47
3.2.3. Expropriation and Public Purpose under the Ethiopian Laws.....	48
3.2.3.1. Meaning of Expropriation.....	48
3.2.3.2. Public Purpose	52
a) Meaning.....	52
b) Public Purpose under the Ethiopia’s Constitutions and Subsidiary Legislations.....	54
c) Role of Courts in Determining “Public Purpose”.....	59
3.3. Compensation	62
3.3.1. Definition.....	62

3.3.2. Justifications for Compensation.....	65
3.3.3. Theories of Compensation.....	66
3.3.4. Notion of ‘‘Just’’ or ‘‘Commensurate’’ Compensation.....	72
Chapter Four	
4. Issues of Expropriation in Oromia: The Law and the Practice.....	76
4.1. An Overview of Applicable Law for Assessment of Compensation.....	76
4.2. Expropriation of Landholdings in Eastern Industry Zone.....	78
4.2.1. Power to Expropriate Landholdings.....	78
4.2.2. Responsibilities of Competent Authorities.....	83
4.2.3. Procedures for Expropriation of Landholdings.....	85
4.3. Assessment of Compensation in Eastern Industry Zone.....	88
4.3.1. Right to Compensations for Expropriation of Rural Land Use Rights.....	88
4.3.2. Determination of compensation.....	95
4.3.2.1. Valuation System and Mandate to Value.....	96
4.3.2.2. Basis of compensation.....	97
4.4. Amount of Displacement Compensation in Rural and Pre-Urban areas.....	99
4.4.1. Mode of Payment.....	99
4.4.1.1. Compensation in Cash.....	99
i. Monetary Compensation for Permanent Termination of Use rights.....	100
ii. Monetary Compensation for Temporary displacement.....	106
4.4.1.2. Compensation in Kind.....	108
4.4.2. Complaints and Appeals in Relation to Compensation.....	111
Conclusion.....	114
Recommendations.....	117
Bibliography	120
List of Interviewees.....	126
Annexes.....	vii

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Abstract

This paper reviews the legal rights of peasants and pastoralists in Ethiopia in general and the Oromia Regional State in particular; and examines the adequacy of compensation payable for expropriation of rural landholdings in Oromia. The study found that although the FDRE Constitution of 1995 and Oromia Revised Constitution of 2001 provide for secured and lifetime use rights over rural landholdings and also provide for payment of “commensurate” amount of compensation. There are great discontents in the research site of the study (in Eastern Industrial Zone) due to payment of low amount of compensation because of unscientific method of valuation. The paper also described situations in which public purposes are not implemented in accordance with the time and manner agreed in peri-urban areas of the region. The rural citizens who have been affected by the expropriation are facing difficulties to restore their life because of low amount of compensation and due to lack of commitments from the part of expropriating authorities to help them rehabilitated and public purpose has become a looming crisis to the life the farmers. The calculation formula provided by the law is unscientific and unjustifiable both in theory and in practice and it cannot be a basis for “commensurate” amount of compensation. The law is also not sufficiently clear regarding time of payment and this has resulted in delay of payment of compensation in some cases.

The paper recommends the policy makers and implementing agencies of the regional state to rethink about the citizens whose life have been getting worst because of taking of their landholding. Particularly, it advises the concerned government organs to monitor the implementation of public purposes for which land was expropriated and to take appropriate measures on illegal sale of lands in urban and peri urban areas of Oromia.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

In rural residents of most developing countries, including Ethiopia, land is the main economic, political, social and cultural asset. It is the crucial source of generating livelihood income for society. It remains an asset that farmers have to accumulate wealth and transfer the same to future generation. Moreover, the issue of land has not simply remained to be an economic affair but also it is very much intertwined with the people's culture and identity. In a nutshell, land related issues in developing countries are the most sensitive part of overall development that government needs to consider.

In present Ethiopia, land is the common property of 'the state and the people', and, hence, is not subject to sale, exchange or mortgage.¹ Rural farmers and pastoralists are guaranteed a plot of land free of charge while urban residents can secure the same through ground lease arrangements.² The state grants only a use right over land to peasants and pastoralists in rural areas in Ethiopia in general and Oromia regional state in particular, which is provided in both federal and regional rural land use and administration proclamations.³ To secure such rights, the Constitution prohibits eviction of holders of the land without just cause and payment of compensation.⁴ Due to rapid growing urbanization and modernization of infrastructures as well as expansion of foreign and national investment, a large tracts of rural land in the country in general and the regional state in particular, are being taken by way of expropriation.

Expropriation is a very intrusive power held by government. While potentially devastating to individuals, the power is also necessary in a functioning society. In a democratic system, the political process provides some degree of checks and balances against governments acting unreasonably, but the legal system also enforces certain rules and procedures for expropriation.

¹ FDRE Constitution, 1995, Art.40(3)

² Ibid,Arts.40(4,5,6)

³ See also FDRE Constitution, Proclamation 455/2005, Proclamation 456/2005, Proclamation130/2007,

⁴ Supra Note 1 ,Art.40(4)

The procedures and authority for direct expropriation are usually based on statutes. Each jurisdiction has laws that state how the government can expropriate property and when it has to compensate the owner. In most cases involving government expropriations, the applicable statute governs the rights of the land owner/ possessor to compensation. Depending on the nature of the taking and the applicable legislation, the owner/possessor of the property can receive compensation in the form of market value of the property, injurious affection, disturbance, and special value. Interest and consultancy costs are also commonly awarded in the owner's compensation package. Parliamentary enactments and court decisions over time have refined and reduced the scope and application of the state power of expropriation. In respect of land, now, expropriation is exercised only in cases where designated land is used for a public purpose and accompanied by payment of fair compensation.

This study is conducted to describe the concept of expropriation and the valuation methods followed in Oromia regional state presently, and to assess the fairness of amount of compensation paid in the event of rural land expropriation. It also examines the issue of public purpose requirement for the cause of expropriation.

1.2. Statement of the Problem

In Ethiopia in general and Oromia regional state in particular, presently urbanization and investments are expanding. This reality necessitates the expropriation of rural land for such more useful public purposes by the government. In relation to compensation to be paid for rural land expropriation, it is argued that there is no uniform system of valuation of amount and mode of just compensation. This is partly related to public ownership of land in the country. Although the constitution has guaranteed the right against eviction of farmers from their use right without just cause and payment of commensurate compensation, other laws are criticized for lacking clear enforcement procedures regarding the payment of fair compensation to the farmers. Still it is not clear whether legislations adopted by the government both at the federal and regional levels adequately address the issue of just compensation for rural land expropriation, and whether the practice is compatible with the law regarding the amount of compensation to be paid and mode of valuation in Oromia regional state. Another debatable issue is whether the cause for expropriation is genuine for in most cases lands expropriated under the guise of public purpose

are fenced by those investors without making any use of it for the purpose it was expropriated in accordance with the manner and the time of contract of lease. Therefore, it is imperative to critically examine the laws, the policies as well as the practices in Oromia with specific reference to issues of expropriation, i.e., the notion of public purpose and compensation paid during the termination of use rights over the rural and peri-urban landholdings.

1.3. Research Questions

This research has sought to answer the following questions:

- i. What is the extent of the farmers' rights and tenure security over their landholdings in Ethiopia in general and Oromia in particular?
- ii. Does the expropriation of use right over rural and peri urban landholdings in Oromia constitute compensable interest?
- iii. Can the rural land users' claim just amount of Compensation for the expropriation of their landholdings?
- iv. Do laws and policies adopted in relation to expropriation of rural landholdings in Ethiopia in general and Oromia effectively address issues of expropriation and compensation?
- v. What constitutes "public purpose" under Ethiopian laws? Is the expropriation power in fact exercised to achieve the public interests?
- vi. Is the amount and mode of compensation being applied in Oromia adequate?
- vii. Is there clearly defined right of appeal against the administrative decisions on the amount and mode of compensation in the regional state?
- viii. Is there a requirement for a specific time for the payment of compensation?
- ix. How far is the practice compatible with the law in the regional state?

1.4. Literature Review

Those researchers who conducted research on land expropriation and compensation in Ethiopia in general and Oromia regional state in particular have indicated that there are many shortcomings regarding the legal frame work and practice.

Daniel W/ Gabriel examined that the authority of the state to expropriate land held by farmers and other citizens is limited by public purpose and payment of “commensurate” compensation⁵. He argued that if the state takes a piece of land from a person without a public purpose that amounts to illegitimate expropriation or confiscation of land.⁶ He also added that the same is true if the state takes some body’s plot of land without the payment of compensation. Furthermore, he stated that payment of compensation in the case of expropriation is founded, among others, upon the justification that the public should not enrich itself at the expense of its member and payment of compensation introduces disciplined taking. He highlights the two common views about payment of compensation, i.e., indemnity principle and taker’s gain principle. He also tried to determine the contents of the market value approach to compensation. Besides, he reviewed the three approaches to valuation of property in the course of expropriation: comparable sales approach, income capitalization approach and replacement cost approach.⁷

Based on the federal laws and practice in Amhara regional State, he reached conclusion that “there is no problem with the wordings of the FDRE constitution and the fact that land is owned by state by itself does not imply the nonpayment of compensation.”⁸ According to his findings, the implementing proclamations and regulations fail to implement the principle of “commensurate” Compensation enshrined in the constitution. He also found that the valuation method followed in Urban and a peri-urban area is the replacement cost approach due to underdeveloped real property market in Ethiopia.⁹ Accordingly, as per his findings, the market price of houses and buildings is greatly based on the price of construction materials, instead of the value and location of the land, where the building is situated, which might be partly attributable to the state ownership of land in the country. He further criticized that expropriation procedure has been adversely affecting the landholder’s rights which is resulted because of ineffectiveness of the relevant laws to uphold the constitutional guarantee for commensurate compensations and non observance of the same in practice. Finally, he concluded that the value

⁵ Daniel W/Gebriel, Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation, 7th FIG Regional Conference, Spatial Data Serving People: Land Governance and the Environment – Building the Capacity Hanoi, Vietnam, (October 2009)

⁶ Ibid

⁷ Ibid

⁸ Daniel W/Gabriel, Compensation during Expropriation, in Muradu Abdo’s (Eds.) Land Law and Policy in Ethiopia since 1991: Continuities and Changes, *Ethiopian Business Law Series*, Vol. III (2010), 191-234

⁹ Ibid

of the rural land expropriated that is calculated on the basis of the previous five year's average annual income of the farmer does not adequately compensate the farmer's loss.¹⁰

Gudeta Seifu also argued that law is an instrument to promote tenure security in Oromia Regional State¹¹. He asserted that three factors affect tenure security: duration of the rights of holders, the assurance of rights for all land holders and robustness of rights of holders. He surveyed the Oromia regional state's rural land laws in light of duration of rights in land given to holders, guaranteed use and transfer, and guaranteed disposal right of property on the land.¹²

Likewise, Abebe Legese stated that law of compensation applicable in the case of expropriation of rural lands in Oromia is vague; particularly, in relation to the amount and mode of compensation and the practice is also incompatible with the laws.¹³ He argued that even the practice in the regional state is not similar¹⁴.

Bereket Bushura examined the law of compensation applicable up on expropriation of rural land holding rights in the regional state of SNNP.¹⁵ He found that provisions of law that provide for compensation for various interests such as permanent improvements to land, the right to get substitutable land, and things attached to the land as well as payment of compensation are vague and have to be replaced by a clear provisions. Some important property rights such as the right to claim compensation for immovable in the regional state are not clearly provided.¹⁶ He also found that there are gaps and disparities between the laws of federal and regional rural land administration and use proclamation of the region of SNNP especially in relation to the right to

¹⁰ Ibid

¹¹ Gudeta Seifu, Rural Land Tenure Security in the Oromia National Regional State, In Muradu Abdo Eds., Land Law and Policy in Ethiopia since 1991: Continuities and Changes, *Ethiopian Business Law Series*, Vol.III (2010)

¹² Ibid

¹³ Abebe Legese, The Law of Expropriation and Compensation in Oromia Regional State, [Unpublished, AAU, Law Library], (2004)

¹⁴ Ibid

¹⁵ Bereket Bashura, 'The Law of Compensation Applicable upon Expropriation of Rural Land Holding Right in the Regional State of Southern Nations, Nationalities and Peoples', [Unpublished, Addis Ababa University, Law Faculty, 2006)

¹⁶ Ibid

substitutable land compensation. Above all, he argued, there is a chronic contradiction between the law and practice in the regional state.¹⁷

Despite the contributions these studies made to the understanding of the concept of compensation for expropriation of rural lands in Ethiopia in general and regional states in particular, certain questions still remain unanswered. For instance, Daniel W/Gabriel conducted his research on the basis of the federal laws and Amhara Regional State only. Hence, his findings cannot represent the reality of entire country in general and the situation of Oromia regional state in particular. Gudeta Seifu didn't analyze the laws of the Oromia regional state in light of adequacy and fairness of compensation since his focus was on the tenure security. Thus, the issue as to the fairness and adequacy of amount and mode of compensation in Oromia regional state demands further research that will describe the practice and analyze the provisions of laws related to the issue. Moreover, the studies conducted by Abebe and Bereket got limitations due to passage of time and there have been improvements in relation to adoption of laws on the issue of rural land expropriation and fairness of compensation. Because they conducted these studies in 2004 and 2006 respectively; and their findings of the time cannot reflect the current situation in Ethiopia in general and Oromia regional state in particular. Besides, the findings of the above researches failed to address whether there are really public purposes and just causes behind expropriation of the land.

Therefore, this research is believed to be unique in that it is sought to fill the gaps in the aforementioned and other previous researches due to their inability to reflect the current reality and their weak focus to the issue of examining the laws applicable to compensation for rural land expropriation in the Oromia regional state by backing the theoretical frameworks with application of laws in their actual spirit. More over, it will be significant in bridging the gap existed in relation to the lack of understanding on the effectiveness of laws adopted in relation to payment of just compensation for expropriation of rural lands and their practical implementation in Oromia regional state.

¹⁷ Ibid

1.5. Objectives of the study

1.5.1. General Objectives

The basic objective of this research is to examine the laws applicable to compensation of rural land expropriation in Oromia regional state in one hand, and the adequacy and fairness of the amount of compensation both theoretically and practically, on the other. In a nutshell, it is sought to determine whether the right to compensation for expropriated rural lands in the region is clearly and adequately provided by the law, and to examine whether there is a discrepancy between the law and the practice and the existence of similar practices of valuation and amount of compensation in the region. It is also aimed at examining the existence of public interest for the cause of the expropriation of the land.

1.5.2 Specific Objectives

This research is aimed to:

- Determine the extent of tenure security on landholdings in Oromia and the legitimacy of claiming of adequate amount of compensation;
- Analyze the pertinent provisions of laws adopted in relation to compensation for expropriation of rural lands at the federal level and Oromia regional state;
- Assess the amount, mode and adequacy of compensation being applicable in the region;
- Assess whether there are clear guidelines of law on how to pay uniform amount of compensation;
- See whether there is specified time of payment of compensation;
- Critically assess the availability of the right of appeal against the administrative decision on the amount of compensation on the use right of rural lands in the regional state;
- Critically examine whether the practice regarding public purpose is going in line with the law; and
- Suggest possible recommendations for the problems which could be revealed as research findings.

1.6. Significance of the Study

It is believed that this study will contribute to the effort of strengthening the legal framework and practical performance of government organs concerned with rural land administration and payment of compensation for rural land expropriation in the Oromia regional state. Moreover, it will also be a base for potential researchers to conduct further studies on the issue.

1.7. Methodology of the Study

In conducting this research, both qualitative primary and secondary data have been employed to be collected in the following methods.

7.1 Methods

7.1.1 Primary Data:

7.1.1.1 Interview: The method employed to obtain primary data is face to face interview with different people including farmers whose landholdings have been expropriated for the purposes of investment and urbanization mainly around Dukem-Bushoftu Industrial Zone (The Eastern Industry Zone). The interviewees have been selected purposely for they are those whose situations are devastating due to expropriation of their landholdings. The concerned officials from the Bureau of Investment, Bureau of Rural and Agricultural Development Legal Department, Bureau of Land Administration as well as judges and lawyers were also used as input for the study.

The Dukem town and the Research Site is one of the industrial zones selected by the federal government. A number of hectares of the rural lands have been expropriated due to the expansion of urbanization, investment activities, construction of public services such as Addis Ababa-Adama high way road construction, Eastern Industry Zone and other activities. It has been observed that rural land is extensively expropriated around the Dukem Town (Peri-urban areas) mainly for establishment of Eastern Industry Zone. The Industry Zone, which is under construction by the Chinese Company, has caused the expropriation of 500 hectares of land from the possession of farmers. It is believed to plant 80 different kinds of industries including manufacturing, garment, agro-processing and different factories for production of various goods. This area has also been affected by Addis Ababa-Adama road construction by the Chinese company called EIZ construction (which has affected 33.1 hectares of land).¹⁸ Moreover, the Ethiopian Railway Authority has also expropriating rural land for the construction of Ethio-Djibouti Railway.

¹⁸ The 33.1 hectares of land has affected 25 farmers land and 2, 257,386.30 Birr has been paid in the form of compensation. Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011, Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person Of Land Valuation And Compensation Committee Of The Woreda, July 12, 2011

Due to the importance of Dukem Town for construction of dwelling houses, private investments and public service utilities, the rural land has also been urbanized and added to the master plan of the town. For these and other activities which could constitute “public interest”, the public authorities believe that anything that might be needed by investors (domestic and foreign), cooperatives, government agencies NGOs, religious institutions and so forth will justify the expropriation of rural land upon payment in advance of compensation.¹⁹ According to the data organized by the Akakai woreda in 2009, 440 hectares of rural land has been taken for investment activities on the public purpose justification. Thus, the concern of this study is to review the law applicable on the expropriation and adequacy of compensation in Oromia Regional State Finfinne Surrounding Special Zone Akaki Woreda (Dukem and its vicinity).

7.1.1.2 Documents: In addition, primary documentary sources including the FDRE constitution, federal land administration proclamation No. 89/1997, Federal Land Administration proclamation No. 455/2005, Federal Rural Land Administration and Use Proclamation No.456/2005, Oromia Rural land use and Administration proclamation No. 56/2002, proc No.70/2003, proclamation No.103/2005, a proclamation to amend proc. No.56/2002; proc No.130/2007 have been analyzed in relation to compensation for rural land expropriation in Oromia regional state.

7.1.2 Secondary data:

The study also has used the relevant literature materials as secondary sources.

1.8. Limitation of the Study

Undertaking the study was not an easy task; particularly, obtaining information for the purpose of the study has been a demanding and burdensome task owing to the tedious bureaucracy in the government organizations concerned with the land expropriation. Worst of all, it was difficult to get relevant data to be used as input to the study due to the absence of organized information on the issue in the research site. For instance, there is no organized data that show the total size of land expropriated and the number of family affected by expropriation proceedings in Akaki Woreda.

¹⁹ Ibid

1.9. Structure of the Study

The study is organized into four chapters as follows. The first chapter introduces the reader with the study. It highlights the reasons that necessitated the research and the objectives that are intended to be achieved. It presents the statement of the problem, research questions, general as well as specific objectives of the research, literature review, significance and the research methodology briefly.

The second chapter deals with issues related to rural land tenure security and use rights those farmers and pastoralists have over their landholding. A discussion on land tenure systems highlights the laws, policies and practices from pre-1974 period up to the current government regime. The current land policy issues in Ethiopia in general and Oromia in particular have been given concerns under this part. The effects of rural land certification and registration on tenure security in the Oromia as well as limitations of the existing pertinent law have been covered.

The third chapter deals with the conceptual framework of expropriation and compensation in general and in light of relevant laws of Ethiopia. An attempt has also been made to raise and discuss the public purpose requirement as a limitation on the power of state to take property rights of private individuals. Furthermore, whether the expropriation of the farmers' landholdings has achieved its very purpose is the other issue to be discussed in detail. It ends by discussing the concept of just compensation in the context of Ethiopian law.

In the last chapter, but not certainly the least, the laws and the practices regarding the adequacy of compensation for taking of landholding rights over rural lands in Oromia have been critically assessed. The valuation method and systems; the compensation schemes and compensable interests in Ethiopia in general and Oromia in particular have been critically analyzed. The provisions of laws, including the FDRE constitution, the 2001 Revised Oromia Constitution, the implementing proclamations and regulations which are adopted in relation to the issue at hand both at federal and the Oromia as well as practices around the Eastern Industry Zone have been examined. Finally, the study closes with conclusions and possible recommendations.

CHAPTER TWO

2. Land Tenure Security and Rights of Land Users in Oromia Regional State

In agrarian country like Ethiopia, land tenure system is not only an economic affair but also it is highly interconnected with the people's culture and identity. This partly explains why land related issues usually generate deep emotional reactions. For rural residents of most developing countries, land is the primary means of production used to generate a livelihood for a family. It is also the main asset that farmers have to accumulate wealth.²⁰

Land tenure, as an institution, not only governs access to and control over land and land based resources and the flow of the benefits thereof. It is also a source of expectations, a basis for actors to simulate and predict each other's behavior in the sphere of activity to which the regime applies and thus the fundamental role it plays in a society should not be overstated.²¹ The kind of tenure system and security of landholding in a country is one of the most important issues to be examined, particularly, in developing countries. This is because; it is a tenure system of a country that defines and regulates basic elements in any right to land like access to rural land, tenure security and rights and obligations of the land holders.

In Ethiopia, tenure security is one of the controversial issues particularly in relation to the extent of rights of farmers over their landholding in general and the adequacy and fairness of the amount of compensation paid during rural land expropriation that may emanate partly from state ownership of land in the country.²² In this chapter, tenure security of rural landholding in the current Ethiopian situation and rights of landholders will be reviewed on the basis of Federal and Oromia Regional State rural land administration and land use laws.

²⁰ P. Groppo, Land Reform, Land Settlement and Cooperatives, (Editoria Group, FAO Information Division, 2003), p.103

²¹ Bereket Bashura, '*The Law of Compensation Applicable upon Expropriation of Rural Land Holding Right in the Regional State of Southern Nations, Nationalities and Peoples*', [Unpublished, Addis Ababa University, Law Faculty, 2006), p.27

²² Klaus Deininger, et al, "*Land rental in Ethiopia: Marshallian Inefficiency or Factor Market Imperfections and Tenure Insecurity as Binding Constraints?*" Selected Paper Prepared For Presentation At The American Agricultural Economics Association Annual Meeting, Portland, (July 29-August 1, 2007), p.5

2.1 Conceptual Framework for Rural Land Tenure and Tenure Security

So as to understand the meaning of key terms in this chapter, it is vital to define what constitutes land tenure and come up with workable definition for the sake of convenience. While land tenure is broadly understood as property relations in land and their administration²³, FAO has defined the term “land tenure” as: “the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land... [It] is an institution, i.e., rules invented by societies to regulate behavior regarding on how land is accessed and used.”²⁴ There are three things to be noted regarding land tenure in this definition. Firstly, it refers to people’s relationship to land. Secondly, land tenure is an institution through which individuals’ access to land and use right is determined. Thirdly, it denotes rules of the game through which the content of rights and duties of individuals with respect to land are defined.²⁵ The relationships are usually defined by customary rules or formal laws. In both cases, tenure rules define land property rights regarding access, control and transfer of rights with corresponding duties and restraints.²⁶ Similarly, Middleton has defined land tenure as “a system of relations between people and groups expressed in terms of their mutual rights and obligations with regard to land.”²⁷ This definition signifies that rules of land tenure define how property rights to land are to be allocated within society.

In a nutshell, according to FAO’s definition, land tenure systems determine who can use what land for how long, and under what conditions. Ogolla and Mugabe, on the other hand, maintained that land tenure defines “the methods by which individuals or groups acquire, hold, transfer or transmit property rights in land.”²⁸ There are varieties of property rights in land such as the right to use, transfer and improve, to appropriate returns and the like.²⁹ This bundle of rights may be transferred or transmitted either individually or together at the discretion of the

²³ Gudeta Seifu, “Rural Land Tenure Security in the Oromia National Regional State”, In Muradu Abdo Eds., *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes, Ethiopian Business Law Series*, Vol.III (2010), p.112

²⁴FAO Corporate Document Repository, *Land Tenure and Rural Development*, Rome (2002), p.7

²⁵ Gudeta Seifu, *supra* note 4

²⁶ Abebe Mulatu, compatibility between rural land tenure and administration policies and Implementing laws in Ethiopia, In Muradu Abdo’s Eds., *Land Law and Policy in Ethiopia Since 1991: Continuities and Changes, Ethiopian Business Law Series*, Vol.III (2010), p.2

²⁷ Yegremew Adal, Some Queries about the Debate on Land Tenure in Ethiopia, Institute of Development Research, Addis Ababa University, p.52 as cited in *Ibid*

²⁸Gudeta Seifu, *supra* note 4

²⁹ *Ibid*

holder with or without limitations depending on the system of tenure. Accordingly, the rules of tenure determine the nature and content of property rights and the conditions under which these rights are to be held and enjoyed.³⁰

In this manner, different authorities define the term “tenure security” from different perspectives. For the sake of convenience and consistency, it seems important to draw a working definition that should be used in this paper. Therefore, tenure security refers to “the degree of the reasonable confidence not to be arbitrarily deprived of the land rights enjoyed or of the economic benefits deriving from them and including both the objective elements (clarity, duration, and enforceability of the rights) and subjective elements (landholder’s perception of the security of their rights).”³¹

As far as the important features of tenure security, for instance, that denote the existence of better land tenure system in a country are concerned, it has been argued that:

*tenure security implies the ability of a farmer to cultivate a piece of land on a continuous basis free from imposition, dispute or appropriation from outside sources, as well as the ability to claim returns from input or land improvements while the farmer operates the land and when it is transferred to another holder.*³²

Therefore, as can be discerned from the foregoing proposition, tenure security refers to the situation in which farmers practically enjoy full rights of use and appropriation of the returns from the land through being protected from different impositions and interferences from others. It is state of affairs in which farmers are guaranteed to exercise their holding rights freely without any hindrance from any quarter. Thus, tenure security requires guaranteeing use rights, which include permanent, exclusive enjoyment as well as free transferability.

³⁰ Ibid

³¹ Ibid

³² Ibid

In addition to actual security of the rights of the holder, it has been asserted that perception of the farmer that his holding rights are secure is crucial. In this regard, it has been quoted that:

*when an individual perceives that he or she has rights to a piece of land on a continuous basis, free from imposition or interference from outside forces, as well as the ability to reap the benefits of labor and capital invested in that land either in use or upon transfer to another holder.*³³

Hence, this assertion purports that unless the actual security is coupled with the reasonable perception that the rights in land are secure and free from external interferences, even in the existence of actual security, it is not an easy task to conclude that tenure security exists objectively.³⁴ At this juncture, one may ask what causes tenure insecurity, if any. Tenure insecurity maybe caused as a result of four factors: inadequate number of absolute rights, inadequate duration in one or more rights, lack of assurance in existing rights and costs of enforcing rights.³⁵ Hence, to ensure sustainable growth, it can be argued that these issues should be central to the land tenure policies and land laws by providing proper tenure arrangement.

2.2 Overview of Land Tenure Policy in Ethiopia

Land is the basic socio-economic asset in Ethiopia in general and Oromia Regional State in particular. It has been emphasized that the way land rights are defined influences how land resources are used and economic growth.³⁶ Historically, in Ethiopia, the north-south regional distinction was reflected in land tenure differences.³⁷ The pattern of land tenure policy and property rights farmers have are dependent mainly on policy exercised by three different political

³³ Gudeta, supra note 4, p.114

³⁴ Ibid

³⁵ Ibid

³⁶ Melkamu Belachew and Shewakena Aytenfisu, Facing the challenges in building Sustainable Land Administration Capacity in Ethiopia, (FIG Congress, Facing the Challenges – Building the Capacity Sydney, Australia, 11-16 April 2010), p.3

³⁷ Shimelles Tenaw et al, “Effects of land tenure and property rights on agricultural productivity in Ethiopia, Namibia and Bangladesh”, University of Helsinki Department of Economics and Management Discussion Papers No.33, Helsinki, (2009), p.4

regimes since the beginning of the 20th century namely: the imperial, the Derg and the current regimes.³⁸

2.2.1 Pre-1974 Period

Until the 1974 revolution, Ethiopia had a complex land tenure system.³⁹ The nature of the land tenure arrangement comprises private, state, church land, kinship and other forms.⁴⁰ During the imperial regime the land tenure types refer mainly to the imperial administrative classification which is commonly distinguished between communal (rist), grant land (gult), freehold, or sometimes referred to as private (gebbar tenures), Church (Samon), and state (maderia, mengist) tenure regimes.⁴¹ Emperor Haile selassie I, like Emperor Menelik the II (his predecessor), made extensive land grants to members of the royal family, the loyal members of the nobility, members of the armed forces and the police, top government officials and civil servants and notable businessmen.⁴² This type of land tenure system adopted by the Ethiopian Empire is described as one of the most complex compilations of different land use systems in Africa.⁴³ It was a time when more than 70% of the fertile land was owned only by 1% of the property owner of the entire population in Ethiopia.⁴⁴ The then immediate three most important consequences of land privatization were the eviction of a large number of peasants, the spread of tenancy, emergence of absentee landlordism and the displacement of pastoralists.⁴⁵

The major problems of the Pre-1974 land tenure in Ethiopia include exploitative tenancy, land concentration and utilization, tenure insecurity and diminution and fragmentation of holdings.⁴⁶ Tenure insecurity that was considered as one of the main limitations of pre-revolution reform land tenure system is manifested in various forms ranging from endless litigation over land

³⁸ Id, p.13

³⁹ R. S. Bhalla, "Property Rights, Public Interest and Environment" in Calestous Juma and J.B. Ojwang (eds.), *In Land We Trust*, Initiative Publishers, Nairobi (1996), p.61

⁴⁰ Melkamu and Shewakena, supra note 17

⁴¹ Shimelles Tenaw et al, supra note 18

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Melkamu and Shewakena, supra note 17

⁴⁶ John W. Bruce et al, 'After the Derg an Assessment of Rural Land Tenure Issues in Ethiopia (1994), (Unpublished, A Collaborative Project of Land Tenure Centre, University of Wisconsin Medison and The Institute of Development Research, Addis Ababa University), p.107

rights to complete eviction from holdings.⁴⁷ Besides, there were problems of institutional inadequacy and the land owned by the absentee land lords was underutilized.⁴⁸ These were the most important obstacles to the country's development in general. The privatization of land in the south which was continued at renewed great speed and force in the period of three-and-half decades made important cause of political grievances and leading to the 1974 revolution that resulted in the overthrow of the regime once and for all.⁴⁹

2.2.2 The Derg Period

The Derg, in its land reform in 1975, appropriated all land and abolished the diverse tenure arrangements in the imperial regime.⁵⁰ The land reform destroyed the feudal order; changed landowning patterns, particularly in the south, in favor of peasants and small landowners; and provided the opportunity for peasants to participate in local matters by permitting them to form associations.⁵¹ Landlords lost their land rights and land was distributed to individual households, with household system size being the main criterion for land allocation.⁵² Under Proclamation No.31/1975, all rural lands were nationalized and private ownership of rural lands was totally abolished to realize the following policy objectives:⁵³

- ✓ to quit the feudal land-lord tenant agrarian relations and to do away with the exploitation of the masses by the few;
- ✓ to increase agricultural production by enabling the tiller the owner of the fruits of his labor and increase rural income; and

⁴⁷ Ibid

⁴⁸ Dassalegn Rahmato, Access to Resources and Livelihood Insecurity, Forum for Social Studies, (Addis Ababa, Ethiopia. (2003), p.8

⁴⁹ Ibid

⁵⁰ D. Rahmato, (1994) Land Tenure and Land policy in Ethiopia after the Derg, Proceedings of the Second Workshop of the Land Project, Working paper on Ethiopian Development No. 8. The Centre for Environment and Development, University of Trondheim, Norway and Institute of Development Research, Addis Ababa University, Ethiopia, Alemu, T. (1999) "Land Tenure and Soil Conservation: Evidence from Ethiopia." Ekonomiska Studier, Göteborgs Universitet (Kompendiet Göteborg), Sweden, Melkamu Belachew and Shewakena Aytenfisu, Facing the challenges in building Sustainable Land Administration Capacity in Ethiopia, (FIG Congress 2010, Facing the Challenges – Building the Capacity Sydney, Australia, 2010), p.4

⁵¹ Melkamu and Shewakena ,supra note 17, p.4

⁵² Ibid

⁵³ Proclamation to Provide for the Public Ownership of Rural Lands, 1975, the Preamble, Proc No.31/1975

✓ to release for industry the human labor suppressed under the feudal system.

The "Public Ownership of Rural Land Proclamation" nationalized all rural land and set out to redistribute it to its tillers and to organize farmers in *cooperatives*, thereby abolishing exploitative landlord-tenant relations so pertinent under the imperial regime.⁵⁴ The provisions of the Proclamation (No. 31/ 1975) include: public ownership of all rural lands; distribution of private land to the tiller; prohibitions on transfer-of-use rights by sale, exchange, succession, mortgage or lease, except upon death and only then to a wife, husband or children of the deceased; and in the case of communal lands, possession rights over the land for those working on the land at the time of the reform. The power of administering land was vested in the Ministry of Land Reform and Administration (MLRA) through Peasant Associations at the grassroots level.⁵⁵ The law also provided the maximum land a family can possess.⁵⁶

Although no able adult person was allowed to use hired labour to cultivate their holdings, problems associated with declining agricultural productivity and poor farming techniques were prevalent.⁵⁷ Government attempts to implement land reform also created problems related to land fragmentation, insecurity of tenure, and shortages of farm inputs and tools.⁵⁸ In general, diminution and land fragmentation of holdings, tenure insecurity, land degradation and inefficient allocation of land by the way of restrictions on land transfer and to some extent lack of appropriate land use and administration were among commonly cited problems in relation to the land policy of the Derg Regime.⁵⁹

2.2.3 Land Tenure System Since 1991

The existing government announced the continuation of the land policy of the Derg Regime under the Constitution of 1995 that approved and confirmed the state ownership of land in

⁵⁴ Shemellis et al, supra note 18

⁵⁵ Proc No.31/19975, Art.8

⁵⁶ Id, Art.4 (3)

⁵⁷ Yigremew Adal, *Review of Landholding Systems and Policies in Ethiopia under the Different Regimes*, Addis Ababa, Ethiopian Economic Association/Ethiopian Economic Policy Research Institute (2002), p.56

⁵⁸ Ibid

⁵⁹ Bruce *et al*, supra note 27

Ethiopia. The present government's land policy, unlike that of the "Derg", is enshrined in the Constitution. Accordingly, the government effectively eliminated land policy as a variable instrument that could be used to address the changing circumstances that affect the rural economy. Article 40 of the 1995 constitution (which provides for property rights) states that the right to ownership of rural and urban land as well as of all natural resources is exclusively vested in the state and in the people of Ethiopia. Pursuant to the Constitution "Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or other means of exchange."⁶⁰ In addition, the Constitution states that "Ethiopian peasants and pastoralists have the right to obtain land without payment and are guaranteed the protection against eviction from their possession."⁶¹ The Constitution guarantees the rights of peasants and pastoralists of free access to land and the right of individuals to claim compensation for improvements they make on land including the right to bequeath, transfer or remove such improvements when the right to use the land expires.⁶² Now, farmers have the right to use the land indefinitely, lease it out temporarily to other farmers and transfer it to their children but cannot sell it permanently or mortgage it. Another important provision regarding property rights states that "Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath and where the right of use expires, to remove his property, transfer his title or claim compensation for it."⁶³

The present Ethiopian government continues to advocate state ownership of land whereby only usufruct rights are bestowed upon landholders.⁶⁴ The users' rights exclude the right to sell or mortgage the land.⁶⁵ This was to protect the rural peasants from selling off their land to wealthy individuals leaving them landless and without source of livelihoods.⁶⁶ The government builds its argument on the premises of social and historical justice that is based on two principles: (i) Justice Understood as Egalitarianism: guaranteeing every farmer in need of agricultural land equal rights of access to such land, and (ii) Historical Justice: granting tenure security to the

⁶⁰ FDRE Constitution, 1995, Art. 40 (3)

⁶¹ Id, Art. 40 (4) and (5)

⁶² Id, Art. 40 (7) and (8)

⁶³ Id, Art. 40 (7)

⁶⁴ Shimalles et al, supra note 18, p.13

⁶⁵ FDRE Constitution, 1995, Art.40 (3)

⁶⁶ Shimalles et al, supra note 45

Ethiopian farmers who had experienced land deprivation and land expropriation through different mechanisms during the imperial era.⁶⁷

The Constitution also states that the Federal Government shall enact laws for the utilization and conservation of land and other natural resources.⁶⁸ Moreover, it states that Regional Governments have the duty to administer land and other natural resources according to federal laws.⁶⁹

The first Federal Land Administration and Use Law was enacted in July 1997 which is referred to as “Rural Land Administration and Use Proclamation No. 89/1997.” This law vested Regional Governments with the power of land administration which is defined as “the assignment of holding rights and the execution of distribution of holdings.⁷⁰ Further more, holding rights were also defined as “the right any peasant shall have to use rural land for agricultural purposes as well as to lease and, while the right remains in effect, bequeath it to his family member; and includes the right to acquire property thereon, by his labor or capital and to sell, exchange and bequeath same.”⁷¹

This Proclamation has laid down the fundamental principle uphold by the Constitution of the Federal Democratic Republic of Ethiopia that land is a common property of the Nations, Nationalities and Peoples of Ethiopia which shall not be subject to sale or to other means of exchange.⁷² It empowers Regional States to enact their own laws to administer rural lands within the framework of the general principles provided in the federal law.⁷³ It further obliges regions to observe the federal environmental laws in the event of making their own land use laws.⁷⁴ On the basis of this Proclamation, Regional States can either issue their own rural land administration

⁶⁷ Ibid

⁶⁸ FDRE Constitution, 1995, Art.51

⁶⁹Id, Art. 52

⁷⁰ “Federal Rural Land Administration Proclamation No. 89/1997”, Art.2 (6), Fed.Neg.Gaz, 3rd Year No. 54

⁷¹ Id, Art. 2 (3)

⁷² Id, Art. 4

⁷³ Id, Art. 5 (2)

⁷⁴ Id, Art. 5 (3)

laws or adopt the general principles of the federal proclamation and come up with their own land use regulations. Accordingly, regions had issued such laws in the past.⁷⁵

In July 2005, the Federal government enacted the “Federal Rural Land Administration and Use Proclamation No.456/2005”, which reaffirms state ownership of rural land but confers indefinite tenure rights,⁷⁶ rights to ‘property produced on the land’, rights to intergenerational tenure transfer,⁷⁷ rights to rent out land, and lease rights to land users for commercial investments.⁷⁸ The law makes provision for the registration and certification of tenure rights.⁷⁹ The proclamation also specifically addresses degradation of rural land, including defining the obligations of tenure holders to sustain the land, with specific requirements depending on slope, requirements for gully rehabilitation, restrictions on free grazing and protection of wetland biodiversity.⁸⁰ This Proclamation also has provisions indicating that there will be no further land redistribution, except under special circumstances.⁸¹ It is worth noting that this proclamation applies to any rural land in Ethiopia including the Oromia regional state, the subject of this Study.⁸²

Since 1991 some policy changes have been introduced. For instance, the frequency of land redistribution which is considered as cause of tenure insecurity is reduced.⁸³ Some regions declared that they would not make any more administrative land redistribution while others restricted redistribution to irrigated land.⁸⁴ Other land policy improvements comprise land transfer through (with some restriction) rental arrangements including mortgaging the use right

⁷⁵ Regional States have also enacted legislations to strengthen tenure security, modeled after the federal law. For instance, Oromia, Proclamation No.56/2002, Proclamation No.70/2003, Proclamation No.103/2005, Proclamation No.130/2007, Tigray Region has enacted proc No.97/98 and proclamation 136/2008

⁷⁶ Proc No.456/2005, Art.7 (1)

⁷⁷ Id, Art.5 (2)

⁷⁸ Id, Art.8 (1)

⁷⁹ Id, Art.6

⁸⁰ Id, Art.10

⁸¹ Id, Art. 9

⁸² Id, Art.4

⁸³ M.M. Ahmed, S.K. Ehui, Berhanu Gebremedhin, S. Benin and Amare Teklu, “*Evolution And Technical Efficiency Of Land Tenure Systems In Ethiopia*,” International –ILRI- International Livestock Muarch Institute Socio-economic and Policy Research Working Paper 39, (2002), p. 10-11

⁸⁴ For instance, Tigay and Amhara Regional states have banned administrative redistribution of land while the Oromia and SNNP regions restricted the possibility of redistribution to irrigable land.

by private commercial farms.⁸⁵ After 1997 some policy initiatives are also made towards establishing sound land administration system through rural land registration and certification.⁸⁶

Despite the existing policy and legal measures, land related problems such as tenure insecurity, restrictions on transfer and lack of adequate land administration system still prevail.⁸⁷ Although the existing legal framework has resolved some issues, it seems to create other ambiguities and does not address some important issues⁸⁸. For example, given the scarcity of land, it is not clear how peasants' rights of free access to land can be assured in practice, and how much land peasants are entitled to. Particularly in the rural areas, scarcity and landlessness of young peasants, women and re-settlers characterize the country's land resource administration.⁸⁹

2.3 Rural Land Tenure Security and Rights of Land Users in the Oromia Regional State

A number of laws relevant to the administration and rural land use have been adopted in the Oromia Regional State in light of the federal rural land laws since 2002. These laws have been amended with a view to accommodate changing circumstances. In the discussions that follow, the Oromia rural land Use and Administration laws will be reviewed in light of land tenure security and land users' rights and obligations over their landholdings.

2.3.1 Proclamation No.56/2002

In 2002 the State of Oromia issued Proclamation No. 56/2002 of "Oromia Rural land Use and Administration" which was amended by Proclamation No. 70/2003. The original rural land proclamation laid down the principles of landholding right of the State in light of the federal land use and administration law. It extends a lifelong use right of agricultural land and provides for expropriation of such land under the exigencies of a need to use the land for a more

⁸⁵ Proc No.456/2005, Art.8 (4)

⁸⁶ Action Aid Ethiopia, 2006, P.11

⁸⁷ Ibid. Dassalegn Rahmato, (2003), P.7

⁸⁸ Melkamu and Shewakena, supra note 17

⁸⁹ Ibid

important public purpose.⁹⁰ The main objectives of this proclamation were to bring about proper management of land and land resources in an efficient and sustainable manner without compromising the development endeavor of the future generations and to determine the scope of rights, security and obligations of land users in accordance with the land policy of the nation.⁹¹ The guiding principles of this very legislation are outlined concisely under Article 4 of the proclamation. Firstly, land is the common property of the state and the people, and therefore, it cannot be subject to sale or other means of exchange. Second, the law expressly provides that women must have equal rights with men as far as rights to land and access to rural land is concerned.

The proclamation determines the minimum plot size as 0.5 hectares for cereals and 0.25 hectares for perennials. Consolidation of fragmented plots belonging to a farmer could be done on voluntary basis.⁹² This kind of consolidation should be encouraged on all counts since it will facilitate proper use of agricultural land.

Article 5 of the Proclamation stipulates that any adult resident of the region who is aged 18 or above and who wishes to base his livelihood primarily on agriculture is entitled to get rural land free of payment. Article 14 (1) states that redistribution shall not be carried out on the holdings of either peasants or pastoralists in the region except on irrigation land. It is only unoccupied or vacant land and land with no heirs that is at the disposal of the state for future redistribution to landless poor or land deficit peasants pursuant to Articles 14 (2) and 10 (3) of this Proclamation respectively. In light of the objectives of strengthening tenure security set out in the preamble of the proclamation, Article 6 (1) reaffirms that rights to holdings are for life and accordingly peasants and pastoralists have the right to use land under their possession during their life time and bequeath same to members of their family. Nevertheless, the right to transfer one's holding to an heir at law is limited by later law which amended some of the provision of this proclamation as inheritance of use right over one's holding is restricted to natural or adopted

⁹⁰ Oromia Rural Land Use and Administration Proclamation, 2002, Art.4(6), Proclamation No.56/2002, Magaleta Orormia, 9th Year, No.2

⁹¹ Proc No.56/2002, the Preamble

⁹² Ibid. Art.9

children of the land holder.⁹³ The use right of any holder cannot be terminated during the life of that very holder unless and otherwise the land in question is required by the state for “more important public uses” after payment of prompt and adequate compensation for all investments and improvements on the land.⁹⁴ The expropriation of land for public uses should not only be determined by the state and the latter has to do it in consultation with the local community. The law seems to be progressive in restraining the power of the state to expropriate holdings of farmers or pastoralists as it specifically declares that the state can only decide to expropriate land for public use through participation of local community only for investment in public goods.

In line with the principles enshrined in the Federal and Regional Constitutions, Article 6(1) of the Proclamation provides that landholders will have the right to acquire property on the land under their possession and are also entitled to sale, exchange or bequeath property they have produced through their labor or capital without any restriction. In addition, the use right of holders is not tied to continuous residence in a locality where one’s parcel of land is situated and, in effect, the rights to land will not be terminated for moving away or changing one’s residence area.⁹⁵ Desalegn Rahmato asserts that the 2002 land legislation of Oromia is better than the land legislation of other regions.⁹⁶ This proclamation has separately declared for security of rights under Article 1 as could be deduced from the title of the provision which reads “*land user right security*.” Peasants and pastoralists are guaranteed to be provided with lifelong certificates of tenure as per sub-art (1) of the same provision.

This law also lays down a number of obligations that landholders should fulfill as a precondition of exercising their holding rights and keeping the land under their possession for lifelong use. These include proper management of land, maintaining and preserving farmland boundaries, refraining from activities that exacerbate soil erosion, refraining from cultivating gullies, ravines and river boundaries and rehabilitating same, undertaking soil and water

⁹³ See Art.2 (1) of Proclamation No.70/2003, Megaleta Oromia, 9th Year, and No.12, which provides that the term “family member” is construed narrowly only to refer to naturally born or adopted children of the decedent and therefore land cannot be inherited by other relatives of the landholder.

⁹⁴ Proc No.56/2002, supra note 70, Art. 6 (4) and (5)

⁹⁵ Id, Art.15(5)

⁹⁶ See Dassalegn Rahmato, “Searching for Tenure Security? The Land System and New Policy Initiatives in Ethiopia”, FSS Discussion Paper No.12, Forum for Social Studies Addis Ababa, (August 2004), p.2-8

conservation measures, refraining from planting harmful vegetation and caring for ‘mother trees’ standing on farm plots.⁹⁷

It should also be noted that there are few obligations imposed on certain category of land users. For instance, lessees are required to carry out proper land management activities on the plot of land under their leasehold during the lease period⁹⁸ while irrigation land users are obliged to use the land under their holding properly in such a way that avoids misuse and under use of the potential productive value of the land resource, and also mitigate the negative environmental impacts associated with the development of irrigation schemes.⁹⁹

2.3.2 Proclamation No.70/2003

Proclamation No.70/2003 amended proclamation No. 56/2002 and introduced new provisions on redistribution of land in the irrigable areas. Taking the cultural settings of the State of Oromia the amendment also dealt with the issuance of holding right certificates to wives in polygamous marriages. These measures seem to enhance the land rights of women but they tend to be superfluous in practical terms for the joint or separate registration title registration with same holding would cause problems of implementation. This law has also introduced some changes to the preceding law. Firstly, transfer of use rights by holders through inheritance was restricted since the amendment of this Proclamation only permits transfer of holding rights through succession to one’s children by narrowly defining the terms “family member” to constitute natural or adopted children of the holder.¹⁰⁰ Secondly, the new amendment authorizes the government to take away the holdings of peasants or pastoralists and grant leasehold for investors if the land in question is found to be important for public purpose.

2.3.3 Proclamation No.130/2007

As a result of problems encountered in the process of implementing the preceding proclamations and for a need to handle disputes that may arise in relation to land tenure, the

⁹⁷ Proc No.56/2002, supra note 70, Arts.17-19 and 22-23

⁹⁸ Id, Art.11 (6)

⁹⁹ Ibid, Art. 14 (4) (h) and (i)

¹⁰⁰ Proclamation No. 70/2003, supra note 73, Art.2(1)

State of Oromia has enacted a new rural land use and administration law in 2007¹⁰¹. This law reaffirms most of the principles and procedures followed by the preceding laws. Some of the new inclusions in the new law are: the right of investors to mortgage the property acquired on land (through the investment process) and issuance of certificate of holding which could be prepared in the name of the rightful holder, be it joint ownership or otherwise. As per the Revised Land Use Proclamation of 2007, there are basically three types of tenure arrangements, i.e., individual holding, communal holding and state holding.¹⁰² In the following section, salient features and constraints of the new land proclamation will be reviewed in light of access to land, rights and obligations of rural land users, effects of land registration and titling on tenure security and core restrictions.

2.3.3.1 Access to Land

The right to access to rural land free of charge is provided for in the federal and regional constitutions.¹⁰³ In a similar vein, Proclamation No.130/2007, the latest rural land use and administration law of Oromia Regional State, attaches significant importance to secured land users rights as one of its primary goals is to ensure better rights for rural land users including the right to access to rural land.¹⁰⁴ Article 5(5) of the Proclamation provides that “Any peasant, pastoralist or semi pastoralist having the right to use rural land may get rural land from his family by donation, inheritance or from government.” Inheritance and donation are the principal possibilities for acquisition for rural land as access to rural land through market based transactions is limited due to prohibition of land transfer through sales.¹⁰⁵ Transferring land use rights through inheritance or donation of land is restricted as it is only family members whose livelihood depends on the income earned from the land in question or with no other means of income, or landless children of the holder that are entitled to acquire rural land for use through

¹⁰¹ Proclamation No.130/2007,preamble

¹⁰² A close reading Articles 5 and 15 (1) indicates that peasants, pastoralists or semi pastoralists are entitled to obtain private holding, whereas rural communities have the right to access to rural land in the form of communal holding for such purposes as grazing religious activities, water points and other social services.

¹⁰³ See Articles 40 of the FDRE Constitution and Revised Constitution of Oromia Regional State

¹⁰⁴ See Proclamation No. 130/2007, Proclamation to Amend Proc. No.56/2002, 70/2003, and 103/2005 of Oromia Rural Land Administration and Use Proclamations, Preamble, Megeleta Oromia, 15th Year, No.12

¹⁰⁵ Id, Art.6 (6)

donation.¹⁰⁶ Therefore, children of the landholder having other means of income for their livelihood cannot acquire use rights over rural holdings through donation narrowing down opportunities for transfer of use rights via donation thereby limiting access to rural land. Governmental institutions, nongovernmental organizations, private investors and other social institutions are also entitled to get access to rural land.¹⁰⁷

This Proclamation made significant improvement in terms of protecting women's right to land by providing for equal rights for men and women to access rural land,¹⁰⁸ recognizing equal rights to obtain land titles and joint titling for spouses,¹⁰⁹ presuming joint holding of family land and the right to share their landholdings equally upon divorce,¹¹⁰ outlawing land rental agreements without consent of both spouses¹¹¹ and permitting women to use hired labor on their farm plots.¹¹² However, prohibition of gender discrimination with regard to land has not produced significant change in terms of ensuring women's right to land in practice because of inapplicability of these relevant provisions of this law mainly because of obstacles such as the prevalence of entrenched prejudices and biased attitudes towards women in most part of the Region.¹¹³ It is said that women are practically discriminated in many parts of remote rural areas where customary norms are widely applied.¹¹⁴

2.3.3.2 Rights and obligations of Rural Landholders

a) Land Use Rights

Land use right refers to the right of any peasant farmer or semi-pastoralist and pastoralist shall have to use rural land for purpose of agriculture and natural resource development, lease and

¹⁰⁶ Id, Art. 9(5)

¹⁰⁷ Article 5(3) of Proclamation No.130/2007

¹⁰⁸ Art. 5(2)of Proc. No.130/2007

¹⁰⁹ Art. 15(8) of proc No.130/2007

¹¹⁰ Art. 6(13) of proc No.130/2007

¹¹¹ Art. 10(6) of proc No. 130/2007

¹¹² Art. 6(14) of proc No.130/2007

¹¹³ See Gudeta, supra note 4, p.129

¹¹⁴ For instance, the prevailing customary system limits inheritance rights of women to land by allowing land control to rest on the male family members and consequently a married woman's rights is constrained by entrenched cultural practices, limited access to courts and lack of resources, an effective implementation of the provisions of the law protecting women's right to land requires taking series of measures to bridge the gap between the law and the practice. See Id. P.130

bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same.¹¹⁵ Significant legal reform and improvements are incorporated in the existing law in relation to defining the rights of landholders in a way that promotes tenure security. In the first place, the major rights of landholders specified under Art.6 (1) of the Proclamation, among others, include: the right to use one's holding without any time limit, the right to lease out, the right to transfer use right over one's parcel of land to one's family members through inheritance or donation, the right to acquire property produced thereon and the right to sell, exchange and transfer such property and the right to claim compensation up on the expropriation of the holding rights for public purposes.

Nevertheless, the right to dispose property produced on one's holding does not include the sale of land. As the land is exclusively owned by the state and peoples of Ethiopia, transfer of land by sale or any other means of exchange is prohibited. By the same token, the Proclamation, in principle, prohibits sell of fixed assets such as coffee, mango, avocado, papaya, orange, etc .¹¹⁶ However, the Proclamation provides that the fixed assets produced on one's holding may be sold exceptionally in the situation where i) the fixed asset to be sold should not exceed more than half of the total holding of the holder, and ii) the sale agreement of the product should not extend over a period of three years.¹¹⁷ Such agreements must be registered and approved by the Bureau in the same way as it is mandated to approve agreements for share cropping or hiring labor by vulnerable groups on their land holdings,¹¹⁸ overseeing and approving rental agreements¹¹⁹ and approving and registering special agreements rights holders make with investors to develop their holdings.¹²⁰ The rationale behind this restriction is to minimize the insecurity felt by peasant holders in coffee growing rural areas of the region, particularly, the peasant holders in coffee and *khat* growing area of the region have been evicted from their

¹¹⁵ Federal Democratic Republic of Ethiopia Rural Land Administration and Land Use Proclamation, 2005, Art.2 (4) Proclamation No. 456/2005, Fed. Neg. Gaz., 11th Year, No. 44

¹¹⁶ Art.6(2) of Proc No.130/2007

¹¹⁷ Id, Art. 6 (3)

¹¹⁸ Id, Art. 6 (15)

¹¹⁹ Id, Art. 10 (3)

¹²⁰ Id, Art. 10 (8)

holdings as a result of sale of the products of coffee and *khat* to unscrupulous urban wealthy individuals.¹²¹ As a result of this, environmental and social problems have been caused.¹²²

It is worth noting that use rights are guaranteed during the lifetime of the holder and it cannot be terminated unless the land is required for more important public purposes.¹²³ The state is required to pay compensation in advance to the peasants whose landholdings were expropriated and such compensation comprises the value of the property on that land and calculation of the benefits obtained there from as well as replacement of similar plot of land.¹²⁴ The Proclamation also provides that in case where replacement of land is not possible, the holder displaced from his parcel of land will be entitled to payment of compensation for rehabilitation.¹²⁵ Thus, it can be concluded that Proclamation No.130/2007 has tried to effectively address the issue of expropriation and compensation in relation to rural land holdings in the Oromia regional State.

Pursuant to this law, any holder has the right to rent out up to half of his/her total holding for three years if modern farming technology is utilized.¹²⁶ Nevertheless, agreements to rent rural holdings won't be valid unless approved and registered by the Bureau. Furthermore, the law requires that all family members including women, those who have interests in the land, must give their consent before any agreement to rent out rural land holding is concluded¹²⁷ and that land tax must be paid in the name of the landholders in any land rented to others.¹²⁸ The Proclamation seems to introduce the idea of obliging lessees to pay land tax in the name of the land holders with a view to securing the rights of land holders who rent out their land in the absence of properly defined and registered land rights throughout the region.¹²⁹ The practice in the region shows that many of the disputes over rural land are related with the claims

¹²¹ Interview with Ato Aman Muda, Oromia Bureau of Agriculture and Rural Development, Head of Land Use and Administration Department, June 22, 2011

¹²² Gudeta, supra note 4, p.135 The sales transaction usually takes place at times when the holders are in distress and in dire need of finance to meet their basic needs. Since the perennial crops are usually grown near forest areas, the farmers who have already alienated their holdings would resort to cutting the forests in their vicinity with a view to getting some money for their livelihood; which would in turn has caused devastating environmental consequences.

¹²³ Proclamation No.130/2007, supra note 80, Art, 6(10)

¹²⁴ Id, Art.6 (11)

¹²⁵ Id, Art.6 (12)

¹²⁶ Id, Art.10 (1) and (2)

¹²⁷ Id, Art. 10 (6)

¹²⁸ Id, Art.10 (7)

¹²⁹ Interview with Ato Aman Muda, Oromia Bureau of Agriculture and Rural Development, Head of Land Use and Administration Department, June 22, 2011

landholders bring against their lessees for evicting them from their holdings as a result of land rent transactions.¹³⁰ The new Proclamation provides that the government can only rent out to investors the land not held by peasants or pastoralists.¹³¹ The agreement to grant land to investors through lease must protect the benefits of peasant holders and pastoralists in such a way that seems to give priorities in terms of accessing that every land held by farmers and pastoralists as against the private investors.¹³² In this manner, this law has addressed tenure insecurity that may be felt by rural land holders because of assignment via lease of large plots of land held by small holders for commercial agriculture as well as development of industrial projects to private investors by the way of expropriation.

In general, although the new law provides for lifelong use rights over the rural landholdings, this law has not brought about considerable improvements with respect to conditions of transfer of land through inheritance or donation than the previous relevant laws.

b) Obligations of Rural Land Holders

The title of use-right is not only the bundle of rights without any obligation. There are certain obligations imposed on the use right holder by operation of law or by lease agreement based on the source of the title. Some of the obligations imposed by law on the user include: obligation to proper management of rural land, obligation to proper management of farm land, obligation to proper management of grazing land and obligation to proper utilization of lands.¹³³

Proclamation No.130/2007 incorporates provisions of obligations here and there. For instance, the proclamation under Article 6 (16) provides for the main obligations that must be fulfilled by all rural land users to continue exercising use rights over their holdings. In the first place, any rural land user who fails to conserve his holdings may lose his/her holding rights. Secondly, any rural land user who leaves his holdings uncultivated or unused for two consecutive years would

¹³⁰ Gudeta, supra note 4, p.137. Some lessees may be tempted to exploit the precarious nature of the holding rights of their lessors and pay land tax over the plot rented to them in their own names in order to claim title over the land after lapse of some years.

¹³¹ Proc No.130/2007, supra note 80, Art.11 (1)

¹³² Id, Art. 11(2)

¹³³ Id, Art.19-25

be deprived of his/her use rights. The Proclamation contains provisions that provide for proper management and conservation of the land by abstaining from activities that exacerbate soil erosion, forest clearing and ploughing sloppy land and refraining from planting tree species that may cause damage to the land and eradicate weeds that cause harm to land.¹³⁴ In the third place, any rural land user who willfully abandons his/her holding must lose his holding rights. To this end, the Bureau is empowered to issue detailed guidelines on the determination of the fulfillment or non fulfillment of the aforementioned conditions.

However, giving the power of taking away the holdings of the rural landholders under the guise of failure to fulfill the obligations prescribed by the law in the Bureau could raise practical problems since it may subject the holding rights of holders to the discretion of an executive agency entailing dispossession of holders without due process of law as it does not give any clue whether the decision of the bureau could be taken to regular courts for reviewability. Thus, this problem should be reconsidered in the future amendments to this Proclamation. Moreover, the provisions on obligations of landholders to use land properly are couched in very vague terms such as ‘improper use of land that damages the land’ that lend themselves to administrative discretions that can lead to abuse of power and harassment of farmers. Defining what is meant by ‘improper use of land’ and ‘damaged land’ clearly is necessary so that landholders and other stakeholders understand the terms and discharge their obligations properly.

2.3.3.3 Impact of Registration and Land Titling on Tenure security

Many African countries have recently changed their land legislation or institutional setup with the objective of recognizing land rights and providing security of tenure to landholders in new and innovative ways.¹³⁵ One key objective of doing so has been to establish systems of land administration that can provide country-wide coverage at an affordable cost, and that can be upgraded in a flexible way as and when the need to do so arises.¹³⁶

¹³⁴ Id, Art.19 and 25

¹³⁵ Deininger et al, supra note 3, p.1

¹³⁶ Ibid

Ethiopia is one of those countries that made such changes which includes locally administered rights in land, improved position of women related to land rights and (local) dispute resolution mechanisms.¹³⁷ For the rural areas several Ethiopian states have introduced land administration systems that aim at issuing land use certificates for all (sedentary) farmers in that state at an affordable cost.¹³⁸ It is argued that although investment- and productivity-impacts may take longer to materialize (and may be affected by a rather unfavorable policy regime), land right certification reduced conflict, helped to empower women, and improved governance at the local level. We assess advantages and disadvantages of rapidly rolling out a low-cost process (as compared to a higher-cost one) and use an analysis of unresolved issues that emerged in different contexts to illustrate the potential for (and cost of) improving on the basic system in a way that responds to local need, including the use of low-cost mapping techniques to add a spatial component to the information.¹³⁹

In Oromia Regional State, data obtained from the Bureau of Agriculture and Rural Development of the Region (the Bureau) shows that since the beginning of the registration and titling program only 8% peasants (only 1, 860, 751 out of 23, 630, 000 peasants) have received land holding certificates. This constitutes only 26% of the total landholding in the region. On the other hand, the certification process is not yet undertaken in pastoral Areas¹⁴⁰ of the region due to the capacity constraint and complication of the tenure system in such areas.¹⁴¹

The primary objective of the registration and titling of rural landholdings is to ensure security of land rights via capturing as many rights as possible into written documents by using surveys and mapping to demarcate the plots of different categories of holders.¹⁴² Nevertheless, land registration and titling has not always been the source of security for recognizing and protecting all kinds of rights to land.¹⁴³ For instance, in Oromia Regional State, the commencement of land

¹³⁷ Id, p.3

¹³⁸ Ibid

¹³⁹ Id, p.2

¹⁴⁰ Such pastoral areas include Borena, Guji, and low lands of Bale, West Hararghe, East Hararghe and Karrayou

¹⁴¹ Gudeta, supra note 4, p.131 cited Jean Pierre, Rural Land Plans: Establishing Relevant Systems for Identifying and Recording Rights, in making land rights more secure, edited by Ph. Lavigne-Delville et al, International Workshop for Reseachers and Policy Makers, Ouagadougou, March 19-21, 2002, International Institute of Environment and Development, p.35-47.

¹⁴² Ibid

¹⁴³ Gudeta, supra note 4, p.131

registration program has been the main source of insecurity for right holders as the beginning of the registration process was marked with outburst of new waves of land disputes entailing voluminous litigation.¹⁴⁴

The new Rural Land Use and Administration Proclamation (Proc No.130/2007) provides for the compulsory registration system of all categories of rural land holdings. In this manner, Article 15(1) states that all private, communal and state holdings shall be measured and information regarding their size, land use and fertility, shall be collected and registered in the data centers to be established. Each holding must be conveyed with geo-referenced boundaries and the Bureau is required to prepare maps showing the size of the land and its boundaries.¹⁴⁵ Besides, the landholding data must include the name and identity of the current holder, the boundaries of his holding, the status and potentials of the land and rights and obligation of the holder.¹⁴⁶ Article 15 (4) provides that the registration of holding rights is followed by land titling and certification whereby each holder is granted with a holding certificate describing the size of his holding, use and coverage, fertility, boundary and his rights and obligations. Moreover, it is provided that any rural land holder is entitled to a lifetime certificate of holding.¹⁴⁷ Therefore, guaranteeing lifelong use rights for peasant holders will enable them to have secured legal rights over their holdings. In addition, the new law affords sufficient protection for the rights to land of women by clearly stipulating that spouses will be granted with joint certificates of holding over their common family farmland.¹⁴⁸ The requirement that any agreement to transfer use rights over certain farm land temporarily through rent must be registered by the Bureau¹⁴⁹ would help to check as to whether or not all the agreements to rent out family land have received the full consent of all family members having use rights over that plot.¹⁵⁰ In a similar vein, the law provides that agreements for sharecropping or hiring labor made with vulnerable groups such as women, disabled, orphans and aged persons must be approved and registered by the Agricultural and Rural Development Bureau of Oromia, if it is to extend for a period over six

¹⁴⁴ Ibid

¹⁴⁵ Proc No.130/2007, supra note 80, Art.15(2)

¹⁴⁶ Id, Art. 15(3)

¹⁴⁷ Id, Art. 15(6)

¹⁴⁸ Id, Art. 15(8)

¹⁴⁹ Id, Art. 15(5)

¹⁵⁰ Id, Art.10(6)

months.¹⁵¹ In this manner, the new land law of Oromia strives to protect the interests of vulnerable groups.¹⁵²

However, it is argued that the process of rural landholding certification has been causing conflicting claims and courts are said to be overloaded with a number of land disputes since 2004 when the land measurement and registration process began in the regional state.¹⁵³ Although it seems premature to undertake comprehensive evaluation of the success or otherwise of the registration and titling project at this time, the process is criticized for being cost ineffective and tainted with administrative inefficiency.¹⁵⁴

2.4 Limitations of Current Rural Land Use and Land Administration Laws

a.Redistribution of Land

The experience of land redistribution in the last three decades during the Derg regime and EPRDF rule is one of the greatest sources of land tenure insecurity and anxiety among the rural population.¹⁵⁵ While the federal land proclamation is unclear on this issue, Oromia has taken a bold step to ban forced redistribution of rural land in its revised Proclamation. To this end, Article 14 (1) of Proclamation No.130/2007 rules that “Redistribution of peasant or pastoralist or semi pastoralist's land holding shall not be carried in the region except irrigation land.” However, the guarantee provided in the federal constitution and federal and regional land laws, that anyone of age 18 and above has a right to get rural land free seems to presuppose redistribution may undertaken. Such right can only be guaranteed only in sparsely populated areas. It is not possible to exercise this right in areas that are fully settled and utilized without redistribution of land. Therefore, this provision should be qualified to apply only in areas where unutilized land is available. Stipulating that there will be no forced distribution of land in the regional proclamation is not enough. The rural population does not read published government gazettes that are not widely circulated. Rural landholders, particularly in Oromia region need to be told and hear this

¹⁵¹ Id, Art.6(14-15)

¹⁵² See Gudeta, supra note 4, p.133

¹⁵³ Ibid

¹⁵⁴ Ibid

¹⁵⁵ Solomon Bekure et al, “*Removing Limitations of Current Ethiopian, Rural Land Policy and Land Administration*”, Paper Presented at the Workshop on, Land, Policies & Legal Empowerment of the Poor, The World Bank, Washington D.C., (November 2-3, 2006), p.8

ban repeatedly. Publicizing the ban widely through a public awareness campaign using multiple media and fora will enhance tenure security much more effectively than land use right certification alone.

b.Using Land Use Rights as Collateral

The land laws do not allow land rights being used as collateral for loans. The rationale provided for this seems to be protecting rural land holders from exploitation by loan sharks and land speculators and also to stem the tide of rural to urban migration.¹⁵⁶ That this restricts access of rural land holders to institutional credit is counter-argued by governments pointing out that institutional financiers are not interested in accepting rural land use rights as collateral. Many scholars do not agree with this and ask the question ‘why are investors who lease land for a limited period allowed to use their land use right as collateral while small scale landholders who have use right in perpetuity are not accorded the same privilege?’ Furthermore, they question the validity of the government’s argument that smallholders will lose the use rights they mortgage and migrate en masse to the cities and towns and those governments should play the role of Big Brother. A great majority of rural land holders are smart enough not to gamble with the future of their families’ livelihood. The countrywide survey conducted by the Ethiopian Economic Policy Research Institute found out that only 4.5% of landholders are willing to sell their land if given the opportunity and 90% indicated that they will not consider selling whole or part of their holdings.¹⁵⁷

c.Restrictions on Inheritance

Current federal and regional land laws restrict inheritance of rural land only to family members who are resident in rural areas while the country’s succession law does not put any restriction to whom one can bequeath their property and rights. Such restrictions are introducing distortions in child/parent relations and conservation of natural resources. Aging farmers are showing tendencies of cutting trees and paying less attention to conservation measures, knowing that

¹⁵⁶ Ibid

¹⁵⁷ Ethiopian Economic Association/Economic Policy Research Institute, Research Report on Land Tenure and Agricultural Development in Ethiopia, Addis Ababa, (2002).

when they die, their children and relations will not benefit from these resources.¹⁵⁸ However, a study is required to determine the effects of inheritance restrictions on family relationships and on conserving natural resources.

d.Restrictions on Leasing Land

Although regional land laws permit leasing of rural land, there are serious restrictions limiting the benefits of leasing. First, landholders cannot rent 100% of their land. They can rent only that amount of land that does not displace them from the land; i.e. they should reserve enough land that yields sufficient output to sustain their family.¹⁵⁹ Such restriction affects adversely the disadvantaged such as old widowers and orphans who are not able to physically work their land. Furthermore, it limits the efficient reallocation of land resources from those who want to earn their livelihood from off-farm employment opportunities and still retain their land resources as a safety net in case the off-farm employment sours. The land laws also put a limit on the number of years that smallholders can rent out their land, particularly to other small scale farmers.¹⁶⁰ Allowing longer term leases encourages renters to engage in long term investment and development.¹⁶¹ Lifting and/or easing such restrictions would facilitate the creation of land use right markets that assign economic value to and thus convert landholdings into valuable assets.¹⁶² A study on the effects of such restrictions on the rural economy is required to provide knowledge and inform policy formulation and decisions.

e.Rural Land Valuation and Compensation

There is a fear of unfair valuation of land and lengthy and inadequate compensation for land taken under the powers of eminent domain that may create a high degree of tenure insecurity and anxiety among rural landholders.¹⁶³ Addressing such fear in valuation and compensation

¹⁵⁸ Ibid

¹⁵⁹ See proc No.130/2007, supra note 80, Art. 10 (1) states that “without prejudice to Article 7(1) any peasant, pastoralist or semi pastoralist has the right to rent out up to half of his holding.”

¹⁶⁰ Id, Art.10 (2) states that “Duration of the agreement shall not be more than three years for those who apply traditional I farming, and fifteen years for mechanized farming.

¹⁶¹ Solomon et al, supra note 134, p.11

¹⁶² Ibid

¹⁶³ Id, p.9

laws and, more importantly in applying these laws in a fair and equitable manner is essential to enhance tenure security.

Land taking by regional governments for expansion of cities and towns and for lease to investors in agriculture and industry is rising rapidly.¹⁶⁴ The federal laws on rural land expropriation and compensation, having been crafted by the agencies that are taking land seem to disfavor those that are losing the land.¹⁶⁵ Moreover, it stipulates that the federal regulations on land taking apply only to federal agencies. Land taking by regional government agencies will be governed by regional regulations.¹⁶⁶ However, the Regional Governments, including the Oromia region, have not enacted their land expropriation and compensation regulations. Lack of standardized valuation and compensation methods and procedures are causing different valuations by different land taking agencies, resulting in different compensation values for similar lands.¹⁶⁷ Furthermore, regional agencies, mainly municipalities that are zoning large expanses of land for lease to housing and real estate developers are facing cash flow problems.¹⁶⁸ While they are evicting farmers from peri-urban areas and have to pay compensation immediately, they will be leasing the land and receive fees in the future. There is no bridging finance available as financing instruments such as municipal bonds are unknown in Ethiopia.¹⁶⁹ This is leading to undervaluing peri-urban land and property to match the available funds which are unfair to those losing their lands and have to establish new livelihoods.

The rural land valuation and compensation in the Oromia Regional State will be discussed in the coming Chapter of this Thesis. This study will analyze the current practice both in valuation methodology and compensation procedures and payments and make recommendations on how the issues mentioned above could be addressed in a fair and equitable manner.

¹⁶⁴ Ibid

¹⁶⁵ Ibid

¹⁶⁶ See Proc No.455/2005, Art.14 (2) which provides that “Regions may issue directives necessary for the proper implementation of this Proclamation and regulations issued hereunder.”

¹⁶⁷ Interview with Ato Zaraay Surafel, Agronomist at Rural Development Bureau of Akaki Woreda at Special Zone of Surrounding Finfine and Chairman of Compensation Valuation and Assessment Committee of Dukem Woreda, 25, 2011

¹⁶⁸ Ibid

¹⁶⁹ Solomon et al, supra note 134, p.9

To sum up, in Ethiopia in general and Oromia Regional State in particular ownership of land is vested in the hand of the state and the Ethiopian people and, thus, is not subject to sale, exchange or mortgage. Nonetheless, rural farmers and pastoralists are guaranteed a plot of land free of charge while urban residents can secure the same through ground lease arrangements. Rural farmers' right to the land is a kind of usufruct right, which merely gives peasants possessory or "holding" prerogatives, including the rights to use and enjoy, rent, donate and inherit the land. To secure such rights, the Constitution prohibits eviction of holders of the land without just cause and payment of compensation. Moreover, Article 40 (8) provides for payment of "commensurate", amount of compensation during expropriation of property. In this chapter, it is argued that the subsequent implementing compensation legislations do not uphold the constitutional principle by providing adequate amount of compensation.

CHAPTER THREE

3. Expropriation and Compensation: An Overview of Conceptual Framework

Expropriation, as a means of land acquisition for public purposes, is an old concept which existed even before the emergence of modern states. Although it is not an easy task to tell the exact time when the concept came into picture, there is evidence that elaborates its existence in old times, where rulers were using excessive power to restrict private property in the interest of their sovereign power,¹⁷⁰ not for the interest of the public, which constitutes the prime rationale for expropriation of private property nowadays. During this time, expropriation was incomplete legal institution because of the absence of legal, procedural and other preconditions that could justify the taking of private property.¹⁷¹ In Ethiopia, it is believed that expropriation was introduced, at least in law, during the Menelik II era.¹⁷²

Afterwards, the notion of expropriation was familiarized as a legal institution particularly with the rise of modern states and at the time when statesmen started representing and safeguarding the interest of the general public.¹⁷³ Due to this reason, there are a number of pre-requisites that must be fulfilled before taking private property against payment of compensation in the current expropriation laws.¹⁷⁴ In this chapter, the conceptual frameworks of expropriation and compensation in general and under the Ethiopian laws in particular will be discussed. In the subsequent sections, different definitions of expropriation, public purpose as limitation on the power of the government to take private property rights and compensation will be discussed in a fairly detailed manner.

3.1 Expropriation Defined

Different scholars have defined the term “expropriation” differently. To this extent, Black’s Law Dictionary defines “expropriation” as:

¹⁷⁰ George S. Challies, *The Law of Expropriation*, (1963), p.1

¹⁷¹ Ibid

¹⁷² The 1908 Minelik’s Law, as reproduced in Bilaten Geta Mahtemeselasie Wolde Meskel (1962) *Zikre Neger*. 2nd ed. Cited in Daniel W/Gabriel *infra* note 82

¹⁷³ Hailemariam Moges, *The New Proclamation No.401/2004 on Appropriation and Compensation: Its Major Area of Departure from Existing Expropriation Laws*, [Unpublished] Addis Ababa University Law Library, (2005), P.1

¹⁷⁴ Rudolf Huebner, *A History of Germanic Private Law*, (2000), p.257

“The right of the state, through its regular organizations, to assert, either temporarily or permanently, its dominion over any portions of the soil of the state on account of public exigencies and for the public good.”¹⁷⁵

This definition indicates that the state has a power over any portions of the soil, which contends that properties found over any portion of the soil of the state are the latter’s dominion. Therefore, the state has the right to assert, either temporarily or permanently, over its dominion. This definition has also some important elements such as “public exigencies and for public good” to refer to the purposes of expropriation. However, it suffers from deficiency since it does not provide for the requirement of payment of appropriate compensation.

On the other hand, according to John Lewis, expropriation is:

“the right or power of a sovereign state to appropriate private property for particular use for the purpose of promoting the general welfare.”¹⁷⁶

According to this definition, the sovereign has a right to take private property for particular use that deemed to promote the interest of the general public. The phrase ‘particular use’ demonstrates that the types of uses that entail expropriation would be enumerated by law. Moreover, such “uses” have to promote the interest of the general welfare. In other words, according to this definition, the state has the right to take private property for public purposes. This definition also falls short of disregarding the requirement of payment of compensation, which is considered highly crucial in the modern expropriation laws.

The two definitions have slight differences to be noted here. For instance, unlike the latter definition, the former definition includes the phrase “regular organizations” through which the state can assert its power. In this manner, it is possible to comprehend, from the former definition, that the organizations of the state which exercise the power should not be arbitrary or irregular. The other point to be noted here is the phrase “public exigency”, which literally seems

¹⁷⁵ Henry C. Black, Black’s Law Dictionary, 5th eds. (1968)

¹⁷⁶ John Lewis, Treatise on the Law of Eminent Domain, (1900), p.1

to be beyond the public good or public welfare as it implies an urgent need that necessitates the expropriation of property.

When one sees the two definitions in terms of guaranteeing private property, the latter definition seems preferable to the former due to the fact that the former definition takes into account all properties over any portion of the soil as the dominion of the state, because as per this definition, the state simply re-takes its own dominion through the power of expropriation.¹⁷⁷ Since both definitions fall to constitute the issue of payment of compensation, they cannot be taken as comprehensive to be working definitions of modern expropriation laws. Therefore, one has to find another definition that can reflect at least the core elements common in the most definitions of expropriation laws.

The term “expropriation” which also termed as “eminent domain” or “compulsory acquisition” in the common law legal systems has been defined as:

“the sovereign power inherent in the states to take private property without the owner’s consent for public use upon making just compensation thereof.”¹⁷⁸

This definition is clear and comprehensive of the key elements common in most expropriation laws of the contemporary world. These are: in the first place it provides that state has inherent power to take private property with out the consent of the owner. This power is exercised with the purpose of furthering the interest of the public use, which prevail over the private interests. Accordingly, this definition puts a limitation on the sovereign power inherent in the states to take property of private individuals as it cannot be exercised merely for the interest of the private interests. The other very crucial element of the definition is that it adds another limitation on the state to exercise the power of expropriation, i.e., the obligation to pay “just compensation” to the owner of the property taken. Therefore, this definition is comprehensive of most elements of the concept of expropriation nowadays and can be taken as working definition in this paper.

¹⁷⁷ Hailemariam, supra note 4, p.3

¹⁷⁸ Charles S.Rhyne, Municipal Law, (1957), p.387

In general, as can be deduced from what has been discussed so far, the term expropriation does not have universally accepted single definition and variety of terminologies are also used to refer to it in different legal systems. However, these definitions do not have basic disparity on the subject matter; rather they convey almost similar meaning. Besides, the analogous terms such as eminent domain, compulsory acquisition, etc., have almost similar meaning with the term “expropriation”, save the slight differences among them. Therefore, in this paper, they may be used interchangeably.

The constitutions and subsidiary laws of many countries recognize the right of state to expropriate private property. For instance, pursuant to Article 10 of the Chinese Constitution “[t]he State may, in the public interest and in accordance with the provisions of law, expropriate or requisition land for its use and shall make compensation for the land expropriated or requisitioned.”¹⁷⁹ This provision contains the basic elements of the concept of expropriation. Specifically, it recognizes the power of the state to expropriate land owned by peasant associations. It also incorporates the requirement of public purpose which triggers the taking and the necessity of paying compensation for that reason. In China, the state expropriates land from the peasant collectives.¹⁸⁰ As any units or individuals cannot purchase or vend the ownership of land, the only way of transfer of the land ownership is expropriation by the state. In fact, no land ownership can be vended except the land owned by the peasant collectives. And the peasant collectives can not transfer the land ownership on their own initiative.¹⁸¹

¹⁷⁹ Margo Rosato-Stevens, “*Peasant Land Tenure Security In China's Transitional Economy*”, Boston University International Law Journal [Vol. 26:97] (2008), p.128

¹⁸⁰ Liao Junping, “*Land Expropriation in China – A simple introduction*”, TS 4C – Compulsory Purchase and Land Acquisition II, 7th FIG Regional Conference Spatial Data Serving People: Land Governance and the Environment – Building the Capacity, Hanoi, Vietnam, 19-22 October 2009, p.2 In China, there is “Land Administration Law of the People’s Republic of China” and “Implementing Regulations of Land Administration Law of the People’s Republic of China.” There are also other relative laws, regulations and Ministry issued rules. The Constitution and the Land Administration Law provide the basic tenure regime in China. The People’s Republic of China practices socialist public ownership of land, namely, ownership by the whole people and collective ownership by the working people. Ownership by the whole people means that the right of ownership in State-owned land is exercised by State Council on behalf of the State. In this respect, the phrase “owned by whole people” refers to the ownership by the state. Whereas “the working people” means peasants on rural and peri-urban lands. Almost all of the urban land is owned by the state, and the rural suburban land is owned by peasant collectives.

¹⁸¹ Ibid

It has been suggested that land appropriation to further economic development in America at different periods in its history and the current practice in China divulge similar strategies.¹⁸² The language of the Fifth Amendment to the U.S. Constitution, commonly referred to as the Takings Clause, entirely recognizes a preexisting power to take private property for public use.¹⁸³ The clause provides: "nor shall private property be taken for public use, without just compensation."¹⁸⁴ In its efforts to create a vibrant economy, the U.S. government closely regulated land use during development.¹⁸⁵ The major objectives of land management were to transfer public land into private hands, to raise revenue, encourage settlement and improve the land since 1850.¹⁸⁶ The power of eminent domain was used to take private property and put it into the hands of developers.¹⁸⁷ At first, this doctrine began with the Mill Acts which granted special land use rights for the public good.¹⁸⁸ "These state statutes permitted mills to operate though their operation injured nearby lands because the mills, though privately owned for profit, offered immediate public benefit."¹⁸⁹ Afterwards, the railroad cases saw the government condemning property and immediately transferring it to private railroad companies with westward expansion.¹⁹⁰ State courts viewed the takings with a sense of urgency and consistently came down on the side of development.¹⁹¹

Expropriation is justified by the public right to land.¹⁹² It was seen as "a legitimate tool to implement overall land management scheme which prioritized efficiency and usefulness of land over stagnancy."¹⁹³ Morton Horowitz, Renowned legal historian, describes eminent domain as a "most potent weapon" and its power to take away and redistribute wealth as the "one truly

¹⁸² Theresa H. Wang, Trading the People's Homes for the People's Olympics: The Property Regime in China, 15 PAC. RIM L. & POL'Y 599, 601 (2006) (comparing U.S. nineteenth and early twentieth century development), Yan Zhang & Ke Fang, Is History Repeating Itself? From Urban Renewal in the United States to Inner City Redevelopment in China, 23 J. PLANNING 2008] as cited in Ibid

¹⁸³ Kohl v. United States, 91 U.S. 367 (1875) (upholding the federal government's use of eminent domain power to procure land for a post office). As cited in ibid

¹⁸⁴ U.S. Constitution, amendment V.

¹⁸⁵ Supra note 14

¹⁸⁶ Harry Scheiber, "Property Law Expropriation And Resource Allocation By Government: The United States In Property Rights In American History, (1997), p.294

¹⁸⁷ Id, p.299

¹⁸⁸ Id, p.301

¹⁸⁹ Ibid

¹⁹⁰ Id, p.304

¹⁹¹ Id, P.301-02

¹⁹² Wang, supra note 13

¹⁹³ Ibid

explosive legal time bomb in all antebellum law."¹⁹⁴ Therefore, nowadays, the expropriation of private property including land possessory right is a well established practice to further more important development goals of the general public.

3.2 Public Purpose Requirement for Expropriation

The concept of “public purpose” is the most contentious issue in the parlance of expropriation power of the government. There is no agreement even on the definition of the term and its equivalent “public interest” among different scholars as its meaning varies overtime and according to the taking involved. For example, a mere expropriation of private property for the traditional function of states was equivalent to public purpose, in the early days.¹⁹⁵ Nevertheless, in the contemporary world, the concept tends to encompass various complex socio-economic activities. In other words, the ambit of public purpose is highly influenced by the development of economic, social and political aspects of particular society.¹⁹⁶ Despite its being a fluid legal concept, the term “public purpose” has been tried to be defined by different literatures, of course, differently. For the sake of further understanding, some of them will be produced in what follows.

3.2.1 Definition

Public purpose is defined as “*a purpose which will benefit the public in general and not individual.*”¹⁹⁷ This definition goes that “it is the advantage or benefit to the public at large that is more important than direct use by the public.”¹⁹⁸ Thus, according to this view, expropriation shall be legal and shall be authorized far as it is advantageous and beneficial to the public at large. However this does not mean that the individual may totally precluded from the taking of property because individual benefits from taking at least indirectly, while primary purpose of

¹⁹⁴ Id, p.129

¹⁹⁵ Horrison Dunning, Colombia Law Review, Law and Economic Development in Africa: The Law of Eminent Domain”, vol.68 (1968), p.1298

¹⁹⁶ V.G Ramachandran, The Law of Land Acquisition and Compensation, (1963), p.321

¹⁹⁷ Raja Muhammed Muzaffar, Compulsory Acquisition of Land, (1967), p.40

¹⁹⁸ J. Dukeminer and J.E. Krier, property, (Boston and Joront. Little Brown and co. 1988) p.997

taking is to safeguard the interest of the public. For instance, the taking of farm lands from the individuals for road constructions can be considered as public purpose.

On the other hand, George S.Gulic defines public purpose as:

*“A public benefit or public advantage and may embrace any thing tending to enlarge the product of capacity or resource of the community and to promote the general welfare and prosperity.”*¹⁹⁹

This definition is somewhat broader than the previous one as it considers anything that tends to promote the general welfare of the society to constitute the public purpose. Therefore, the meaning of public purpose is ultimately based on the widely accepted understanding that the general interest of the community or a section thereof, overrides the particular interest of the individual.²⁰⁰ The purpose which clearly contemplates public good is defined by the governments, who have the power to define it. To this end, Lord Blackburn stated: *“whether the legislature confers powers on any body to take land compulsorily for a particular purpose, it on the ground that the using of that land for the purpose will be for the public good.”*²⁰¹ From this assertion one understands that since the interest of the public gets priority over that of a particular individual, the individual surrenders his right to the benefit of the public regardless of any benefit that might ensue to him from doing of the act either directly or indirectly. Also, there is no similarity in the way the statutes define the term. While some are deliberately left open by the legislature in order to include various activities through the doctrine of interpretation, others try to exhaustively enumerate the list of activities constituting the public purpose.

In the contemporary world, the concept of public purpose can be extended to various issues that might cause hot contentions among scholars. To this extent, Alterman argues that:

“Most legal and theoretical discussions of public purpose pertain only to the initial use. The issue of “public purpose” is heightened when questions are posed over time in

¹⁹⁹ George S. Gulic and Robert T. Kimbrough, *American Jurisprudence*, Vol. 26 (1966), p.665

²⁰⁰ Yeraswork Admassie, *Twenty years to Nowhere, property Rights, Land Management and Conservation in Ethiopia*, (lowrencerille, the Red Sea Press, 2000), p.13

²⁰¹ V. G. Ronce Chandran, *The Law of Land Acquisition and Compensation*, (1965), p.255

*relation to: the permitted time frame for implementing the public purpose, rules about what should happen if the public purpose is not implemented, rules about change from the initial public purpose into a new public purpose after the first is no longer needed, and rules about change from the initial public purpose to a nonpublic purpose.”*²⁰²

This assertion leads one to raise so many questions about the concept of public purpose when it is extended to other related issues. For example, the timeframe in which public purpose should be applied is highly relevant. Because, in most cases the land expropriated is fenced and just stay idle for a number of years. This has devastating effects on both the government which takes the landholdings from individuals under the guise of public purposes, where it cannot control the application of the projects by those who took the land. Therefore, it can be argued that the governments should set time frame for the implementation of the public purposes and take measures on those who fail to implement investment/other works on the land expropriated.²⁰³ It has to enact rules concerning what would happen if the intended public purpose is not implemented on a reasonable time, rules about change from the initial public purpose into a new public purpose after the first is no longer needed, and rules about change from the initial public purpose to a nonpublic purpose.

For instance, in India, the courts have generally given public purpose a liberal interpretation. In the case of *Hamabal Framje v Secretary of state* for India before the Privy Council, certain land was being acquired for the purposes of residences for government officers.²⁰⁴ The Privy Council rejected the contention that a taking is not for a public purpose if the land is not subsequently made available to the public and upheld the acquisition of property to provide accommodation for government officials. The Court held that:

“The argument for the Appellants is really based upon the view that there cannot be a “public purpose” in taking the land if that land when taken is not in some way or other made available to the public at large. Their lordships do not agree with this view. They think the

²⁰² Rachele Alterman, The “Legitimate Public Purpose” for land expropriation, FIG Seminar on Compulsory Purchase and Compensation – Helsinki, (Sept. 2007), p.11

²⁰³ Ibid

²⁰⁴ Andra Eisenberg, *Public Purpose And Expropriation: Some Comparative Insights And The South African Bill Of Rights* , *South African Journal Of Human Rights*, (1995), P.216

true view is well expressed by Batchelor J, where he says ... the phrase, whatever else it may mean, must include a purpose, that is, an object or aim in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."²⁰⁵

The Judges then proceed to define public purpose in this context and Mahajan held:

*"... in the concept of public purpose, there is a negative element in that no private interest can be created in the property acquired compulsorily; in other words, property of A cannot be acquired to or be given to B for his own private purpose."*²⁰⁶

Das J phrased it differently when he said:

*'... it is entirely wrong approach to pick out of a scheme of land reforms and say that item is not supported by a public purpose... The proper approach is to take the scheme as a whole and then examine whether the entire scheme is for a public purpose.'*²⁰⁷

Therefore, the courts accepted that in order to promote the public welfare, the legislature must examine whether the purpose of the acquisition is related to a public purpose or for a private purpose or for no purpose at all.²⁰⁸ In order to determine the existence of a valid public purpose, the courts have emphasized that it is the wider purpose of expropriation measures that must be taken into account and not the specific use of the land in individual cases.²⁰⁹

In China, the public interest requirement for land expropriation is stipulated in the Revised Land Administration Law (LAL) of the country. Pursuant to Article 2, collectively owned land can be expropriated "out of necessity of public interest."²¹⁰ Article 63 permits the dissolution of farmer's rights "for constructing township village public utilities or public welfare undertakings

²⁰⁵ Ibid

²⁰⁶ Ibid

²⁰⁷ Ibid

²⁰⁸ Ibid

²⁰⁹ Id, p.218

²¹⁰ *Revised Law of the P.R.C. on Land Administration (also known as Land Management Law), adopted 16th SCNPC, 6th Session (1986), amended 9th SCNPC 7th Session, and revised 9th SCNPC 4th Session, Eng. transl. available at www.Chinalaw.gov.cn, path select English/select Laws & Regulations/search title Land Administration Law (last visited Mar. 29, 2011).*

upon approval by the appropriate governmental authority."²¹¹ Under the 2004 amendment to the Revised LAL, expropriation of collective land and subsequent construction is for the purposes of national projects or public works and compulsory leasing to the state through requisition is for the "public benefit"²¹²; and factories, development zones and industrial parks are often cited as reasons for expropriation.²¹³

Thus, as can be inferred from the above discussion, although what constitutes public purpose is debatable issue as it differs from country to country, the fact that governments expropriate lands, in the modern world, to pursue the developmental objectives of their country in which the public may be benefited directly or in indirectly has got acceptance every where.

3.2.2 Public Purpose as a Limitation on the Power of Expropriation

It is clearly established as a rule that expropriation for a public use or purpose is permitted.²¹⁴ This shows that government cannot take an established right of a private individual arbitrarily for a purpose other than public use. Thus, the power to expropriate property right of private individuals is limited by the requirement of 'public purpose'. This requirement has been incorporated into the constitutions and subsidiary legislations of many countries. To begin with the America's experience, the Fifth Amendment of the United States Constitution, states in its pertinent part that "private property shall not be taken for public use without just compensation". This provision has been interpreted as requiring that the power of eminent domain not to be invoked except to further a public use or purpose.²¹⁵ In other words, unless the expropriation of land is for the public purpose, that action immediately becomes illegal. Therefore, the only justification for interfering in property rights of private individuals and the expropriation power would only be "for public purpose" and thus it is a limitation put on the power of the sovereign in taking property rights of citizens.

²¹¹ Property Rights Law of the People's Republic of China, 5th Sess. 10th NPC, 16 Mar 2007 [hereinafter New Property Law], transl. John Jiang, Babel.com (Mar. 2007) *available at* www.cclaw.net (last visited April, 29, 2011)

²¹² 2004 Revised LAL, *supra* note 41. The distinction between requisition and expropriation is the only difference between the 1998 and 2004 versions of the RLAL.

²¹³ Rosato-Stevens, *supra* note 10, p.131

²¹⁴ C.J. Berger, *Land Ownership and Use*, (3rd ed. Boston, Little Brown and Com., 1983), p.1018

²¹⁵ *Ibid*

3.2.3 Expropriation and Public Purpose under the Ethiopian Laws

3.2.3.1 Meaning of Expropriation

The first systematic definition of the term “expropriation” is provided under the Ethiopian Civil Code, although the issue of expropriation was introduced in the 1908 Menelik’s land related legislation.²¹⁶ The Civil Code, which traces its origin to the French Civil Code, defines the term “expropriation” as:

*Proceedings whereby the competent authorities compel an owner to surrender the ownership of an immovable required by such authorities for public purposes.*²¹⁷

This definition uses the term proceeding, which needs to be defined in order to make it understandable. Black’s Law Dictionary defines “proceeding” as:

*“the form and manner of conducting judicial business in a regular or orderly progress, including all possible steps in an action from its commencement to the execution of judgment before a court or judicial order.”*²¹⁸

The definition shows that proceeding is nothing but totality of steps that are followed in the court of law. Accordingly, expropriation proceedings, does not clearly reflect the definition of “expropriation.” The phrase “expropriation proceeding” is employed here instead of the word “expropriation” because of a translation error from the original French version.²¹⁹ In sum, when one analyzes the definition given in the Civil Code, s/he may discover a number of elements: like competent authorities, Compulsion, owner, immovable property and public purpose.

²¹⁶ Daniel Weldegebriel, Land Valuation for Expropriation in Ethiopia: Valuation Methods and Adequacy of Compensation, 7th FIG Regional Conference, Spatial Data Serving People: Land Governance and the Environment – Building the Capacity Hanoi, Vietnam, October 2009, 19-22

²¹⁷ The Civil Code of the Empire of Ethiopia, 1960, proclamation No.165, Neg.Gaz., year 19, No.2, Art.1460

²¹⁸ Black’s Law Dictionary, supra note 5, p.836

²¹⁹ It is said that the original French version has defined the term expropriation as follows: “expropriation is a procedure by which the administration obliges an owner to surrender to it the ownership of an immovable which it needs for the purpose of public utility.” see Daniel, supra note 47, p.4

In the first place, to exercise power of expropriation, there should be competent authorities, although there is a need to define the organs of the government termed as competent authorities. In this regard, the current FDRE “Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation No.455/2005” provides for power to expropriate land holdings under Art. 3(1) which reads:

“A woreda or and urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where’ such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.”

As can be seen from the wordings of this article, the competent authorities are woreda or and urban administrations or higher regional or federal appropriate organ. Accordingly, rural or urban landholding can be expropriated by a woreda or urban administrations when they believe that it should be used for a better development projects to be undertaken by public entities, private investors, cooperative societies or other organs. It also tells us that expropriation power can be exercised by the appropriate higher regional or federal organ for the same purpose. However, it is not clear as to what constitutes “better development project.” The procedure is also shallow in that it authorizes these organs of the government to expropriate individual land holdings merely on their belief that the land would be used for “better development project.” There is no mention as to review mechanism by regular courts or other semi judicial body in case the competent authorities abused power of expropriation.

In the definition provided in the Civil Code Art 1460, the term “compulsion” refers to the fact that expropriation is exercised without the consent of the owner of the property. This shows that, if the owner of the property surrenders his property on his volition, it cannot be considered as expropriation. The word “owner” suggests that expropriation proceedings extinguish ownership right. Nevertheless, as indicated under Art 1461(1) of the Civil Code, expropriation proceedings

are not only limited to extinguishing ownership right but also they go further to terminate the right of usufruct, servitude or other rights in rem on an immovable. To put it shortly, expropriation has a wide application over various rights in rem attached to immovable property.

In the above definition, the word “immovable” is employed to indicate the fact that the power of expropriation is exercised to take only an immovable property. Pursuant to Art 1130 of the Civil Code, the word “immovable” refers to lands and buildings. Therefore, according to the Civil Code of Ethiopia, all rights that are subject to expropriation must emanate from land or buildings.

The last element worth mentioning in the above definition is “public purpose”. Expropriation power must be exercised only when there is a clear necessity of public purpose. In this manner, in order for the competent authorities exercise the power of expropriation, public purpose must be declared.²²⁰

Finally, what can be deduced from foregoing discussion is that, to define “expropriation”, one should not entirely rely on Art.1460 of the Civil Code alone. In other words, it is necessary to have a look at the subsequent Articles due to the fact that all elements of expropriation are not embodied in the mentioned provision. Accordingly, the cumulative reading of relevant provisions of Civil Code on the concept of expropriation can be applicable *mutatis mutandis* to the expropriation of landholdings in the present context of Ethiopia, where ownership of land is only vested on the state while the peasants and other landholders have only use rights where they cannot sell or transfer their holding rights in any other means except as provided by relevant laws. Unfortunately, the definition of expropriation under the Civil Code fails to incorporate the principle of compensation. However, this does not seem deliberate act of the legislature since there is principle of compensation under the Code itself.

The deficiency of the Civil Code in defining expropriation precisely and comprehensively is not corrected by the current federal and regional states’ land laws. While the regional laws such as Tigray (Proc No. 136/2007) and Oromia (Proc. 130/2007) Revised Land Administration and Use

²²⁰ See Civil Code, Art 1463

Proclamations fail to define the concept of expropriation, the Amhara Regional State Rural Land Administration and Use Proclamation, exceptionally, defines it as follows:

“Expropriating land holding means taking the rural land from the holder or user for the sake of public interest paying compensation in advance by government bodies, private investors, cooperative societies, or other bodies to undertake development activities by the decision of government body vested with power.”²²¹

More importantly, this definition is inclusive of important elements of expropriation than that of the Civil Code. For instance, it encloses the principles of ‘public interest’, ‘compensation’, and the prerogative power of the state and other delegated bodies to expropriate rural land holding. As it is enacted under the present Constitutional framework, this piece of law considers the notion of expropriation from the perspective of the state or public ownership of land. Consequently, the user of the land is a mere possessor not an owner.

As most definitions of expropriation approaches the issue from the ownership point of view, it is nice to find another more relevant definition of expropriation that also includes the taking of possessory right of landholdings in Ethiopia. Accordingly, expropriation can be defined as:

“the right of the nation or state, or of those to whom the power has been lawfully delegated, to condemn private property for public use, and to appropriate the ownership and possession of such property without the owner’s consent on paying the owner a due compensation to be ascertained according to law.”²²²

This writer prefers this definition as it is more comprehensive and inclusive of almost all basic elements of the concept of expropriation. It tries to answer three basic questions: “who exercise the power of expropriation”, “why private property is expropriated? And, “What procedures should be followed to expropriate private property?” Expropriation is a right exercised by the

²²¹ Amhara National Regional State Proclamation No. 133/2006 Article 2(18)

²²² Ibid

state itself or its sub-branches such as municipalities and other public companies or private companies and people legally authorized by the state/legislature; that the state or the organs authorized to take such lands must follow some procedure, notably pay compensation to the owner/possessor of private property; and it precisely encompasses the issue of “public purpose”. To further understanding of the concept of expropriation, the two basic requirements involved in the above definition, i.e., public purpose requirement and compensation under the Ethiopian laws will be discussed in the coming sections.

3.2.3.2 Public Purpose

a) Meaning

Although the concept of public purpose was introduced in the Laws of Ethiopia early in the 1931 constitution, its meaning was given in the Civil Code of 1960 and other recent federal laws. To begin with the recent laws, proclamation No.455/2005, the current Expropriation of Landholdings for Public Purposes and Payment of Compensation Proclamation, defines “public purpose” as:

*The use of land defined as such by the decision of the appropriate body in conformity with urban structure plan or development plan in order to ensure the interest of the people to acquire direct or indirect benefits from the use of the land and to consolidate sustainable socio-economic development.*²²³

Nevertheless, this definition is very broad to clearly enumerate the types of activities tantamount to public purpose. The definition employs the ‘direct or indirect benefit’ that it offers to society as the basic standard which may serve to identify the types of activities that lie in the ambit of public purpose.²²⁴

²²³Expropriation of Land Holdings for Public Purpose and Payment of Compensation Proclamation. (2005), Proclamation No.455/2005. Federal Negarit Gazeta, Year 11, No.43 Art.2(5)

²²⁴ Proc. No. 401/2004 seems clearer in this regard. The Proclamation, under Article 2/2 listed the kinds of works that are considered as beneficial to the public as power generating plants, highways, airports, dams, railways, fuel depots, water and sewerage facilities, telephone and electrical works and other related activities were listed as public purpose activities.

In relation to this point, Art. (3(1) of the same proclamation is relatively clearer in indicating the activities for which land may be expropriated in Ethiopia. In particular, land could be taken by the competent authorities when it is believed to be used for “a better development project to be undertaken by public entities, private investors, cooperative societies or other organs such as regional public entities”. As can be seen from the wordings of this provision, investment activities carried out by domestic and/or foreign investors, the construction of public goods such as roads, irrigation works, hospitals, schools, universities and so on by public entities (federal and/or regional), cooperative societies, NGOs and etc., may be considered as activities constituting public good although the phrase “better development project” is not clear enough to be understood since it is determined on the sole belief of those competent public authorities, i.e., a woreda or an urban administration or appropriate higher regional or federal government organ as just indicated in the provision at issue.

Proclamation No.401/2004, which is replaced by proclamation No.455/2005, mentions the term public interest under its preamble as a ground for expropriation of land for government works. Pursuant to the preamble of this proclamation, those works which entail the power of expropriation are carried out in the public interest. In this manner, Art 2(2) of the proclamation lists some government works that are deemed to be carried out in the public interest.²²⁵

The other proclamation worthwhile to note here is the Re-Enactment of Urban Land Lease Holding Proclamation No.272/2002. According to Art.2 (7) of this proclamation, “public interest” refers to “*an interest which an appropriate body determines as a public interest in conformity with master plan in order to continuously ensure the direct or indirect usability of land by peoples and to progressively enhance urban development.*” There are two main elements to be well considered here. Firstly, it is only the appropriate body that is empowered to determine that a certain activity entails public interest. Secondly, the direct and indirect usability of land by people can be deemed to entail public interest. Therefore, the scope of public interest in this proclamation is broader than the former one.

²²⁵ See Appropriation of Land for Government Works and Compensation for property proclamation, 2004, proc. No.401, Fed.Neg.Gaz., year 10, No.42, Art 2(2)

In the Civil Code, the term is mentioned under Art.1460 without further illustration, as a requirement for the exercise of the power of expropriation. In its way to illustrate what the public purpose is, Art.1464 (1) of the Civil Code provides that “*Expropriation proceedings may not be used for the purpose solely of obtaining financial benefit*”. This provision seems to narrow down the scope of public purpose. To the writer, it seems contradictory with Art.2 (7) of proclamation 272/2002 due to the fact that in the latter provision, the expropriation by appropriate body can be justified when it is undertaken on the ground of indirect usability by the people. Furthermore, as indicated under Art.1464 (2) of the Civil Code, if the public may benefit by the increase in the value of the land arising from the works done in the public interest, the competent authority can expropriate it.

In this respect, provisions of the Civil Code relating to the public purpose have not been repealed by the subsequent proclamations. But, the proclamations assert that provisions of the Civil Code in relation to matters provided for in these proclamations shall have no effect if they are inconsistent with these proclamations. Accordingly, it would be so difficult to say that provisions of the Civil Code have been repealed unless one analyses them article by article.

b) Public Purpose under Ethiopian Constitutions and Subsidiary Legislations

Expropriation of private property is one of the extreme interventions of the government into the citizens’ basic human right to own/possess property and make use of it. For agrarian country like Ethiopia, land has always been considered to have social, cultural, political and economic importance. The power of state to expropriate landholding from private holders emanates from the common belief that the interest of the public has priority over the interests of private individuals. Therefore, the government cannot exercise such power unless its purpose is aimed at satisfying the more important development objectives in which private individuals benefit from either directly or indirectly.

Taking into account the sensitivity of expropriating property rights of individuals, the requirement of public purpose, as a precondition for the exercise of power of expropriation, is incorporated in the constitutions came into existence throughout the modern history of the

country. Since there were no modern written laws that guide the expropriation of private property before the introduction of the 1931 Constitution, prior to the enactment of the modern laws, there was no issue of “public purpose” as well.²²⁶ The 1931 constitution provides that “*Except in the public utility determined by law, no one shall be entitled to deprive any Ethiopian subject to movable or landed property which he holds.*”²²⁷ The Constitution employs “public utility” instead of “public purpose.” Although this provision rules that the public utility is determined by special law, its literal meaning includes public services like the supply of water, electricity, gas or railway service, etc., and as such seems to be narrower than the public purpose.

The 1955 Revised Constitution is not clear as to “public purpose” because Article 44 of this constitution does not explicitly provide for such requirement. It leaves the issue to be covered by the ministerial order to be issued by the council of ministers. As the constitution is the supreme law of the land, it can be argued that it should have incorporated a clear provision dealing with the issue of expropriation including public purpose requirement so as to regulate the abuse of the power of the expropriation by the government officials.

The Civil Code of Ethiopia deals with the concept of ‘public utility’ under Article 1464. It provides that “expropriation proceedings may not be used for the purpose solely of obtaining financial benefits.” It employs “public utility” instead of “public purpose”. The Civil Code contains plenty of provisions dealing with expropriation and compensation from Arts.1460-1488 in a wider sense.

Next to the Civil Code, the main legislation governing land in the “Derg” period was “A Proclamation to Provide for the Public Ownership of Rural Lands, Proclamation No.31/1975”. It provides that “*the government may use land belonging to peasant associations for public purposes such as schools, hospitals, roads, offices, military basis and agricultural projects (Art.17).*” Furthermore, sub (2) of Art.17 of Proclamation No.31/1975 states that “*the government shall make good such damage as it may cause to the peasant association by the decision to expropriate the holding.*” Accordingly, this Proclamation specifies the conditions

²²⁶ Supra note 47

²²⁷ The 1931 constitution of Empire of Ethiopia, Art. 27

under which the power of expropriation by state could be exercised. It lists the activities that are deemed to constitute public purpose such as schools, hospitals, roads, offices, military basis, although the list is not exhaustive in enumerating all kinds of activities which may be considered to benefit the public. It also obliges the government to make good compensation to the peasant association, who may incur lost as a result of land expropriation. The third constitution in the history of Ethiopia, the 1987 of PDRE Constitution, which came into existence during the “Derg” Regime, has the following to state regarding the issue of expropriation and compensation.

*The state may, where public interest so requires purchase, requisition, by making appropriate payment, or nationalize, up on payment of compensation, any property in accordance with law.*²²⁸

As can be seen from the Article, “public interest” is used instead of “public purpose.” This shows that in Ethiopia’s laws, the two terms are usually used interchangeably, despite slight differences between them. In this respect, some scholars argue that “public interest limits the exercise of police power while public purpose limits the power of expropriation;” and believe that “public interest is wider in scope than public purpose.”²²⁹

The FDRE Constitution of 1995, which is in force presently and the Oromia Regional State Constitution recognize “public purpose” as a limitation on the sovereign right of expropriation under Article 40 (8) as follows:

Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.

Both the Federal and the Oromia regional state constitutions place the public purpose as one of the requirements for the exercise of power of expropriation without making further illustration. With regard to public purpose, there is no significant difference between sub-

²²⁸ The Constitution of the PDRE, 1987, Proc. No. 1, Neg. Gaz., year 47, Art. 13(2)

²²⁹ Awotash Alemu, The Impact of Expropriation on Investment: The Case of Ethiopia, ([Unpublished] Addis Ababa University, Law Library, (2003), p.20

article (1) and sub-article (8) of Article 40 of the FDRE constitution except that “public purpose” is replaced by “public interest”. Since the Constitutions left the details for the relevant subsidiary laws, it is worthwhile to see how the issue of public purpose is treated under the current rural land administration and use proclamations in addition to those mentioned in the foregoing discussions in one way or another.

The current FDRE Rural Land Administration and Land Use Proclamation, Proclamation No.456/2005, under its Article 7 (3) provides that “Holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land thereon.” Where the rural landholder is evicted by federal government, the rate of compensation would be determined based on the federal land administration law. Where, the rural land holder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions.” This provision emphasizes on the payment of compensation to the holder of rural land who is evicted for the purpose of public use rather than dealing with what type of activities constitute public purpose. It provides that the dispossessed landholder must be given compensation proportional to the development work he has made on the land and the property acquired. It also provides that substitute land can be given alternatively. Accordingly, this provision tries to tell us the amount and mode of compensation. Besides, according to this provision, the rate of compensation must be determined on the basis of federal and regional rural land administration and use laws based on who exercised the power of expropriation. In this manner, this Proclamation presupposes the existence of regional laws governing the issue of valuation and payment of compensation. However, although most regional states have enacted rural land administration and use proclamations, they didn’t issue implementing regulations. Rather, they are applying the federal “Expropriation of Landholdings for Public Purposes and Payment of Compensation, Proclamation No.455/2005” to value the amount of compensation.

By the same token, the requirement of public purpose is provided under the Urban Planning Proclamation (Proclamation No.574/2008). In the first place, Article 5(9) of the

Proclamation states that “any process of urban plan initiation and preparation shall balance public and private interest as one of the basic principles of the proclamation.” Article 20 (2) provides that every chartered city or urban administration shall, in the implementation of urban plans, have the power to “dispossess urban land holdings against payment of compensation.” Similarly, Article 21 of the Proclamation says “Any urban landholder whose landholding is disposed as a result of implementation of urban plans shall be paid compensation pursuant to the relevant laws.” The same Proclamation also deals with the issue of Land Acquisition and Reserve under Article 52 (1) which states “Urban centers at all levels shall have the rights and duties to land to be used or reserved for development activities of public purpose” while Article 54 provides that “the rights of chartered cities or urban administration to dispossess holders in case of land acquisition and reserve for public purpose may be exercised in accordance with relevant laws.” Thus, the cumulative reading of these provisions indicates that the power of state to expropriate land for public purposes and the requirement of payment of compensation are well considered. Furthermore, this legislation tries to link the implementation of provisions relating to expropriation and compensation to other relevant laws.

In a similar vein, the Oromia Rural Land Administration and Use Proclamation No.130/2007, the subject matter of this study, under Art 6 provides that “... the rural land use right shall be terminated only if that land is required for more important public uses.”²³⁰ It further stipulates that “... any individual or organ whose landholding is taken for public uses shall have the right to get compensation for his properties and benefits lost beforehand; as much as possible, gets equivalent land individually or in group.”²³¹ It also asserts that “If it is not possible to replace in accordance with Sub-Article (11) of this Article, compensation for rehabilitation shall be paid.”²³² This proclamation tries to lay down the power of expropriation, the public purpose requirement as well as principle of (mode and amount) of compensation. It employs ‘public uses’ to refer to ‘public purposes’ and any individual dispossessed his holding right has the right to get compensation for his

²³⁰ Proclamation No.130/2007, A Proclamation to Amend Proclamations No.56/2002, 70/2003 and 103/2005 of Oromia Rural Land Administration and Use Proclamations, Megeleta Oromia, 15th Year, No.12, Art 6(10)

²³¹ Ibid, Art.6 (11)

²³² Ibid, Art. 6 (12)

properties and benefits lost consequently. Compensation could be paid either in cash or in kind or both pursuant to this provision. Particularly, if it becomes impossible to compensate by land-to-land method, it obligates the government to pay compensation for rehabilitation. Nevertheless, a rule related to the extent of the compensation for rehabilitation is not clearly given.

To sum up, there is a requirement of public purpose as a limitation to the expropriation power of the government, including the government of Ethiopia and governments may not expropriate any property for private purpose, irrespective of their willingness to pay compensation. This limitation is justified due to the fact that the owner/possessor surrenders his right to property without his consent and the state should have compelling reasons for taking such right compulsorily; which is limited to a case where there is some public good which cannot be accomplished without some sort of interference with the private property rights. To this extent, one scholar states:

*“...the most important consideration in the case of eminent domain is the necessity of accomplishing some public good which is otherwise impracticable. ...the abstract right of an individual to make use of his own property in his own way is compelled to yield to the general comfort and protection of community and to proper regard to relative rights in others”*²³³

As can be discerned from this assertion, expropriation power must be exercised only where it is impossible to achieve some public good without doing so.

c) Role of Courts in Determining “Public Purpose”

In principle there is no prohibition to the jurisdiction of the courts to go into the question whether the government exercised its power of expropriation for public purpose albeit the provision in the statute posits that the determination or declaration of the executive must be conclusive evidence.²³⁴ Accordingly, the determination of the legislature as to what constitutes a ‘public purpose’ is subject to review by the courts when it is abused. Thus, it is the generally accepted

²³³ Berger, supra note 26, p.1019

²³⁴ V. G. Ronce Chandran, The Law of Land Acquisition and Compensation (Lalberg Road Lucknow, Eastern book Co, 965), p.255

principle that courts have discretion to investigate and decide whether the statute actually serves a public purpose and even they can go to the extent of deciding whether there is a legislative competency for the measure.²³⁵ Nevertheless, in majority of cases, the determination by the legislative body of that matter is not to be reversed except in cases where such determination is manifestly arbitrary and incorrect.²³⁶

In relation to the issue at hand, the Ethiopian laws are not clear in empowering courts to investigate and decide on whether what has been determined by the legislature to be a public purpose is in fact a public purpose or not. Rather, the determination of public purpose is totally left to the woreda or urban administrations, which are authorized by law to be competent authorities to have a final say on the issue.²³⁷ The competent authorities determine and decide the expropriation to be in the public interest. Firstly, when they believe that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies, or other organs; and the expropriation of property right may be decided by the appropriate higher Regional or Federal government organs.²³⁸ This means, if a decision to expropriate property right of private individuals is passed by either of these organs, no one can question the purpose whether or not to constitute “public purpose”, as it is simply presumed that taking is for public purpose.

Nevertheless, as human being is not free of defect, it would not be wrong to assume that this power could be abused. The determination based solely on the ‘belief of the competent authorities’ and the fact that it is for carrying out of ‘better development project’ is vulnerable to abuse of such power. This is because; there is no clear standard or meaning as to what truly constitutes “a better development project.” Then, the issue here is whether or not regular courts in Ethiopia have the power to determine what has been decided by the competent authorities in fact constitute a public purpose or not. In this regard, it is fair to ask, in the first place, whether there is a prohibition of such a matter to be heard by courts in the relevant laws of the country.

²³⁵ Id, p.257

²³⁶ Id, p.258

²³⁷ Proclamation No.455/2005, Art.3(1)

²³⁸ Ibid

Although the current federal as well as regional land laws are silent on the jurisdiction of courts to review the administrative decisions in relation to public purpose requirement, Art. 15 (2) (e) of the Civil Procedure Code gives the Higher Courts exclusive jurisdiction to entertain suits regarding “expropriation and collective exploitation of property.”²³⁹ As has been discussed in the foregoing sections, the term expropriation is wide concept and has some elements such as the government power of expropriation and competent organs entrusted with such power, public purpose requirement and procedures to be followed to determine it, payment of just or fair amount of compensation, etc. Thus, when one talks about the term “expropriation”, s/he has to bear in mind these elements which constitute its meaning in real sense. Accordingly, it is possible to argue that regular courts have the power to determine whether what has been decided by the competent authority truly constitutes public purpose or not in case there is a grievance on such decision by a person whose landholding has been expropriated. Expropriation is the extreme intervention of the government into the right of private individuals to own or use property, the right that is also considered as human right and constitutionally guaranteed under the current legal framework of Ethiopia. Needless to state, land is life blood of peasants and pastoralists in the country as it is meant everything for their life. This is why the FDRE constitution guarantees right against eviction of their land holding except in case of expropriation for public purposes.²⁴⁰

Land should not be expropriated except for genuine causes of public purposes. The process to determine what constitutes public purpose is too shallow and open door for abuse of power by the competent authorities. On the other hand, the public purpose should not be a looming concept under which the government abuses the constitutional rights to private property. Therefore, the jurisdiction of the courts should be extended to determine whether what has been decided by the public officials really constitutes public purposes to serve the interest of justice. The role of competent and independent judiciary is highly crucial in protecting the rights of citizens against abuse of power by the government. The government should not take private property to further interests other than genuine public purpose and dare to pay compensation. In general, the absence of provisions dealing with review mechanism in the relevant and specific

²³⁹ Civil procedure Code of Ethiopia, 1965, Art 15 (2) (e),

²⁴⁰ FRDE Constitution, 1995, Art 40 (1, 4, 5, 8)

land laws should not be interpreted as if courts lack jurisdiction to review the decisions of administrative bodies regarding the issue of public purpose. Art.15 (2(e)) of the Civil Procedure should be applicable as it has importance and is not clearly repealed by the subsequent legislations.

3.3 Compensation

The critical point concerning expropriation is the question of compensation. Almost all laws of states in the world put this requirement in their laws of expropriation. Thus, the necessity of payment of compensation is no more contentious. Rather the contention lies in what truly constitutes compensation and its adequacy, fairness, or appropriateness. Under this section, the issue of compensation will be approached from general and local point of view.

3.3.1 Definition

Different writers tend to define compensation from different perspectives. For this reason, it is difficult to find a comprehensive definition of compensation. To see some of them, compensation is defined as “*full indemnity or remuneration for the loss or damage sustained by the owner of the property taken or injured for the public use.*”²⁴¹ Although this definition has some important elements, it lacks comprehensiveness that should be considered in the issue of compensation. To begin with its good sides, it incorporates the concept of indemnity or remuneration in the event of land taking for public use. However, it lacks clarity as to time of payment and whether the loss or damage concerns only actual damage or includes consequential and severance damages. The concept of “full indemnity” may also be a dubious concept in relation to the existing situation. Jawaharlal Nehru commented on the concept of full indemnity as follows:

If we are aiming at changes in the social structure, then inevitably you cannot think in terms of giving what is called full compensation. Why?

²⁴¹ C. Francis, J.D. Amendola, D. William, R. John, and J. Kennel, “Eminent Domain”, Corpus Juris Secundum, 29 A CJS EMINENT DOMAIN NO.2 available at <http://web2.westlaw.com/find/default.wl?fn=top&rs=WLW7.02&rp=%2ffind%2fdefault.wl&mt=LawSchoolPractitioner&vr=2.0&cite=29A+C.J.S.+Eminent+Domain+1+1> Accessed on 21 February, 2011.

*Well, firstly, because you cannot do it. Secondly, because it would be improper to do it, unjust to do it and it should not be done even if you can do it.*²⁴²

In this commentary, although the first reason can be tolerated, the second one seems unsound because it is not clear how paying full compensation will be unjust while, for instance, the economic capacity of a country allows it to do so. This commentator has suggested this view in the context of colonial period where most countries of the world were underdeveloped and did not have a capacity to pay full compensation. In that time, since the governments may need to expropriate private property in order to further public purposes in relation to constructing their countries after the independence payment of full compensation was not guaranteed due to economic capacity of the countries. Accordingly, this view can be taken as outdated in the present context of the world. Nowadays, some governments have developed a variety of mechanisms to compensate landowners in excess of market value because of the involuntary nature of the taking. Great Britain provides for special compensation when expropriation of agricultural land disturbs a farmer's operations.²⁴³ Likewise, in Germany, when an expropriation divides or transverses agricultural land, the government must pay additional compensation based on the following: (i) increased time required for the farmer's road travel and preparation of machinery; (ii) damage due to detours; (iii) damage due to increased boundaries on the land; and (iv) damage caused by worsened alignment of the land.²⁴⁴ Italian law provides for a high level of compensation and strong incentives for agricultural landowners and users to accept the compensation offered by the state.²⁴⁵ When agricultural land is expropriated and rezoned for urban uses, the municipality offers compensation of 1.5 to 3 times the government established

²⁴² Leonard A. Quisumbing, *Compensation in Land Reform Cases: A comparative Law Study*, *Philippine Law Journal*, 1969, Vol.44, No.4, p.557

²⁴³ In addition to compensation for the land, if anyone is displaced from an agricultural unit, that person is entitled to a "farm-loss payment," provided that one: (i) has an interest in agricultural land with at least 3 years remaining; (ii) one loses interest in the land because of the state's expropriation; and (iii) within 3 years, one begins to farm another agricultural unit within Great Britain. Land Compensation Act. 1973. § 34 (Eng.).

²⁴⁴ Dr. Christian Grimm, *Rural Land Law in Germany*. (May. 1998)

²⁴⁵ Expropriation, Compensation, and Valuation: ADB Policy and International Experience, Agostini, Danilo. 1998. *Rural Land Law in Italy*. May. (Unpublished manuscript on file with RDI), Each landowner and user has 30 days to decide whether to accept or reject the offer. The level of compensation for urban land differs from rural land and is based on the following formula: the market value of the land (Vm) plus 10 times the cadastre income (RD) divided by two: $(Vm + 10RD)/2$. In practice, this typically leads to compensation that is approximately 40% lower than the market value of urban land.

average value of similar agricultural land in the locality. This higher-than-market value offer of compensation has encouraged landowners to accept compensation offers without appeal to the courts.²⁴⁶ Compensation is also defined as:

*“Recompense in value, a quid pro quo, and must be in money. Land or any thing else may constitute a compensation, but it must be at the election of the party; it cannot be forced up on him; and an act of the legislature which providing that land may be taken and paid for with other lands belonging to the state does not provide a constitutional compensation.”*²⁴⁷

In this definition, the concepts of compensation in case of expropriation are defined in a better way than the previous one. It deals with mode of compensation not only in cash, i.e., money but also compensation in kind with the consent or option of the owner. This definition also adopts the concept of *direct quid pro quo* relationship between the owner and the government. In other words, the government must pay compensation to the owner for what it has taken away from the individual which seems that the payment of compensation should be the actual value of the property taken. Accordingly, it lacks the concept of severance and consequential damage. It also adds that a land belonging to the state does not provide a constitutional compensation. This definition seems to be asserted in a country where land is owned either privately or by state; because in countries where private ownership of land is prohibited such as in China, compensation is recognized constitutionally and paid to landholders for the termination of use rights over the landholding.²⁴⁸

In general, these definitions have important elements regarding the word compensation such as the principle of indemnity, the concept of mode of payments (in cash or in kind), the importance of securing the consent of the owner/holder on the amount and kind of compensation to be paid, the concept of severance damage, etc, which are also relevant to the principles of compensation incorporated under the 1960 Civil Code of Ethiopia. Compensation is defined, under the proclamation No.455/2005 Art 2(11), which is the current federal law on valuation of

²⁴⁶ Ibid

²⁴⁷ Francis J. Ludes and Harold S. Gilbert (eds.), Corpus Juris Secundum: A Complete Restatement of the Entire American Law as Developed by all Reported cases, vol.29A (1965), p.390

²⁴⁸ See Chinese constitution of 2004, Art 10

compensation, as “payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding.” Accordingly, compensation in Ethiopia can be paid either in cash or in kind or in both. It also refers to the compensation to be paid for a private property situated on the expropriated land holding. It does not talk about issue of compensation for landholding rights terminated as a result of expropriation.

3.3.2 Justifications for Compensation

Payment of compensation can be justified on variety of grounds, including economic and socio-political. To begin with economic justifications, it is argued that payment of compensation can encourage the governments to make wise decisions.²⁴⁹ Because of the cost of compensation, it is argued that, “it will always strive to make rational economic decisions that will bring beneficial development to all parties.”²⁵⁰ The owners might not be willing to take risks and invest on their properties, for the benefit may be reaped by others. Moreover, banks would not be eager to lend money for such risky business unless the law gives protection to the reasonable expectations of those who have relied on it.²⁵¹

The other justification rests up on the principle of distributing the burden of public improvements. If property of an individual is taken for public purpose with out payment of any form of compensation, the individual whose property has been taken would be compelled to contribute a disproportionate share to the common good, where there is no strong reason to single him out and compel him to bear all the expenses the society requires to satisfy its needs of development.²⁵² That is, if the owner is compensated, the burden of public improvement which was to be imposed on him would be transferred from his shoulders to the tax payers at large of which he is a member. Accordingly, compensation is a means to keep the balance of social justice.²⁵³ It requires the government to bear the inconveniences resulting from expropriation. Hence, it is argued that no single individual should bear the costs of government projects that are

²⁴⁹ C.E Ndjovu, *Compulsory Purchase in Tanzania*, Doctoral Thesis, Royal Institute of Technology, Stockholm. (2003), ISSN 1651-0216 , p.21

²⁵⁰ Daniel W/Gabriel, “*Compensation during Expropriation*”, in Muradu Abdo’s (Eds.) *Land Law and Policy in Ethiopia since 1991: Continuities and Changes*, *Ethiopian Business Law Series*, Vol. III (2010), 191-234,200

²⁵¹ Ibid

²⁵² Philip Marcus, *The Taking and Destruction of Property under a defence and War Programme*, *Cornell Law Quarterly*, (1942), Vol.27, p.508

²⁵³ Daniel, *supra* note 82

intended to be for the common good as there is no justifiable *raison d'être* to single out an individual and oblige him to bear the entire burden for the benefit of the society at large.²⁵⁴

The last, but not certainly least, justification for compensation is to protect private property from arbitrary and unauthorized takings of the government organs that exercise the power of expropriation. To this end, Marcus stated that “*it is not by accident that provisions for compensation are found in the basic laws of some countries, rather than left to the will of the legislature or the executive, but to protect private property from the latter’s arbitrary actions.*”²⁵⁵ Thus, the requirement of compensation per this argument is to serve as a shelter for private property against the strong power of the government. One may ask the question why we protect private property. There are many theories proposed to justify private property, which are, of course, beyond the scope of this work.

To sum up, although the constitutional right to private property can be restricted for the protection and advancement of public interests, the owner should be compensated for what he is dispossessed because it is not fair to single him out to bear the costs of society alone. Therefore, the procedure of expropriation should be lawful and has to guarantee the right of compensation. Doing so will also protect owners of private property from the arbitrary and unauthorized actions of the legislature or the executive branches of the government. In respect of land, expropriation is exercised only in cases where designated land is used for a public purpose and accompanied by payment of compensation as per federal and regional land laws of Ethiopia.²⁵⁶

3.3.3 Theories of Compensation

So far it has been established that compensation paid up on the expropriation is crucial remedy to protect not only private owners’ property rights but also disciplines the government branches to exercise their powers only for legally and economically justified reasons. Once it is accepted that compensation should be paid in the proceeding of expropriation, and then it is common to ask how to compensate the owner. The manners of determining compensation may be debatable

²⁵⁴ Epstein, R.A. (1993). *Bargaining with the State*. Princeton University Press, Princeton, New Jersey. ISBN 0691 04273X. Available at <http://site.ebrary.com.focus.lib.kth.se/lib/kth/Top?channelName=kth&cpage=1&f00=text&frm=smp.x&hitsPerPage=10&id=10031897&layout=document&p00=eminent+domain&sch=%A0%A0%A0%A0%A0Search%A0%A0%A0%A0%A0&sortBy=score&sortOrder=desc>

²⁵⁵ Ibid

²⁵⁶ See for instance FDRE Constitution, Article 40(8) and all regional states constitutions

since the terms used in legislations often create confusion among valuers.²⁵⁷ In this respect, there are two conflicting theories: principle of indemnity (“Owner’s Loss”) theory and the “Taker’s Gain” theory, which will be discussed below.

3.3.3.1 Owner’s Loss Theory/Indemnity Principle

This theory is principally followed in the majority of the western countries save the slight differences. The main thesis of this theory is that “the owner whose property is expropriated should be entitled to be put as good a pecuniary position as he would have been if his property had not been taken.”²⁵⁸ Accordingly, it is targeted at the “reinstatement” of the owner to the original position he would have had his property had not been taken so that:

*the dispossessed owner would go out into the market and purchase with his compensation money a property roughly similar to that which had been acquired, any incidental loss or expense being met from the proceeds of the disturbance claims.*²⁵⁹

In countries like the United States and France compensation does not reflect what the taker has gained, rather what the owner has lost.²⁶⁰ Besides, according to theory of “owner’s loss”, the goal is not to directly pay the cost of equivalent reinstatement but to compensate for the taking.²⁶¹ For this reason, in France although the taker has got nothing from it, loss of rent, trading loss, moving expenses, dismissal benefits, severance damages, and the like are also coverable, in addition to the market value of the deprived property.²⁶² In the same token, in Sweden, the gain made by the expropriator does not affect the amount of damages that the land owner and other parties affected by an expropriation are compensated on the basis of their loss.²⁶³ The experience of England a little bit differs from that of aforementioned countries in

²⁵⁷ Different countries use phrases like “just compensation,” “fair compensation,” “indemnification,” and so on. The Ethiopian Constitution provides, for its part, the word “commensurate” compensation, without further explanation. see Daniel, Supra note 47, p.9

²⁵⁸ Robert Kratovil and France J. Harrison Jr. Eminent Domain: Policy and Concept, California Law Review Vol. 42, (1954), p. 615

²⁵⁹ Ndjovu, supra note 81, p. 20

²⁶⁰ C.T. McCormick, The Measure of Compensation in Eminent Domain. Minnesota Law Review. Vol. XVII No. 5, (1933), p.465

²⁶¹ Ibid

²⁶² Daniel, supra note 47, p.9

²⁶³ T. Bjerken, Expropriation in Sweden. In Erasmus, G.M. (Ed.). Compensation for Expropriation: A comparative Study. St. Edmund Hall, University of Oxford, Vol. I, (1990), p.129. The only exception is during forced re-

that the state is obliged to pay compensation for disturbance of interests and compensation for severance²⁶⁴ and injurious affection²⁶⁵ in addition to the full compensation of the land acquired.²⁶⁶

In China, compensation shall be made according to the original purposes of land expropriated in which the compensation standards and methods of land expropriation can not change in accordance with the change of the use of expropriated land.²⁶⁷ If the original land is cultivated land, it will be compensated for the standard of cultivated land. If the original land is forest land, it will be compensated for the standard of forest land. If the original land is barren hills and has no revenues, it usually will not be compensated. The government only gives compensation to attachments to the land, which exist before land expropriation, but it will not give compensation to attachments to the land which are newly built after land expropriation.²⁶⁸

In general, the laws of the countries which follow the indemnity principle/ Owner's Loss Theory, takes the loss of the property owner into consideration in the course of valuation of

allotment, in which the owner may, in addition to the compensation for the injury of property, be awarded a share of profit the lost property may give to the future owner. See also Kalbro 2004:59

²⁶⁴ Severance occurs when the physical taking of the part of a parcel of land depreciates the value of the remaining land, see Ibid

²⁶⁵ Injurious affection applies to the depreciation in the value of the remaining land caused by the construction of and use of the works for which the part was taken, see Ibid.

²⁶⁶ V. Moore, "Compulsory Purchase in the United Kingdom", In G.M. Erasmus, (Ed.). *Compensation for Expropriation: A Comparative Study*, St. Edmund Hall, University of Oxford, Vol.1, (1990), p.6

²⁶⁷ LIU Guo-zhen The Reform of the Compensation System of Land Expropriation in China Journal of US-China Public Administration, ISSN1548-6591, USA, Jan. 2007, Volume 4, No.1 (Serial No.26) (Law school of Sun Yat-Sen University, Guangzhou 510275, China), p.2 The compensation for land expropriated follows the basic principle of ensuring not reducing living standards of peasants whose land is expropriated, so that the compensation of the land expropriation is paid on the basis of its ORIGINAL PURPOSE OF USE. According to this principle, compensation for expropriated cultivated land shall include compensation for land, resettlement subsidies and compensation for attachments and unripe crops on the expropriated land. Compensation for expropriated cultivated land shall be SIX TO TEN TIMES THE AVERAGE ANNUAL OUTPUT VALUE of the expropriated land, calculated on the basis of three years preceding such expropriation. Resettlement subsidies for expropriated cultivated land shall be calculated according to the agricultural population needing to be resettled. The agricultural population needing to be resettled shall be calculated by dividing the area of expropriated cultivated land by the average area of the original cultivated land per person of the unit the land of which is expropriated. The standard resettlement subsidies to be divided among members of the agricultural population needing resettlement shall be FOUR TO SIX TIMES the average annual output value of the expropriated cultivated land calculated on the basis of three years preceding such expropriation. However, the maximum resettlement subsidies for each hectare of the expropriated cultivated land shall not exceed FIFTEEN TIMES its average annual output calculated on the basis of three years preceding such expropriation. Rates of land compensation and resettlement subsidies for expropriation of other types of land shall be prescribed by local provincial governments with reference to the rates of compensation and resettlement subsidies for expropriation of cultivated land. Rates of compensation for attachments and unripe crops on expropriated land shall be prescribed by local provincial governments.

²⁶⁸ Ibid

compensation, irrespective of the benefit of the expropriating organ. The main purpose of compensation, as per this theory, is to reinstate the owner of the expropriated property in the same economic position at the time when the property was taken. Accordingly, the principle of indemnity suggested that any claim for increased compensation due to the value of expropriated property should not be allowed. This is so, according to this theory, if the owner/possessor is to be compensated for the increased value of expropriated property which was not the case had taking not happened, it can be tantamount to compensating him/her for the loss he/she has not suffered.²⁶⁹

3.3.3.2 Taker's Gain Theory

Unlike the principle of indemnity, the Taker's Gain Theory maintains that "the government should pay only for what it gets".²⁷⁰ This argument emanates from the concern that the discrepancy between the value of the thing taken by the government and the loss suffered by the owner is caused because of disturbance of a business on the land or other similar remote damages, which would drain the purse of the government or other beneficiary for that matter.²⁷¹ Accordingly, compensation for "consequential damages" like the future loss of profits, expenses of moving fixtures and personal property, the loss of goodwill that inherent in the location, must be denied because as it is not a benefit goes to the government's pocket.²⁷² For instance, when the land which a business was carried on is taken by the government without making use of that business, it is expected to only what it gets, apparently, the market value of the land.²⁷³

In sum, these two contradicting theories try to answer a single question of how to value the compensation to be paid to the owner/possessor in case of expropriation. Yet, despite their operation in countries those accept them, currently, with certain important qualifications; the principle of indemnity (the owner's loss theory) has received predominance recognition over the taker's gain theory.²⁷⁴

²⁶⁹ George S. Charlles, The Law of Expropriation. (2nd ed. 1963), P.88

²⁷⁰ Kratovil and Harrison supra note 90, p.615

²⁷¹ Marcus, supra note 84, p.520

²⁷² Supra note 102

²⁷³ Supra note 47, p.10

²⁷⁴ Kratovil and Harrison, supra note 90, p.616

As far as the approach followed in Ethiopia is concerned, Daniel (2009) argued that principle of indemnity has also been introduced under the Ethiopian laws.”²⁷⁵ In addition, George Krzeczunowicz (1977) asserted that, as a rule, principle of “compensation equivalent to damage” is incorporated under the Civil Code of Ethiopia.²⁷⁶ He stated that “in the Ethiopian system, harm is, as a rule, compensated by the award of an equivalent sum of money to the victim.”²⁷⁷ Art 2090 and 2091 of the Civil Code are relevant provisions dealing with the mode and extent of compensation. To this end, Art 2091 of the Civil Code provides that “the compensation due by the person legally liable is equivalent to the damage caused by the fact giving rise to the liability.” However, in the Civil Code, there are five exceptional cases in which assessment of compensation departs from the rule of “compensation equivalent to damage” .These are: the case of non compensation, compulsory mitigation, discretionary mitigation, optional limitation and “penalty” aggravation. It has been said that “The Ethiopian system tackles these exceptions, which are qualified by various policy reasons, by legislations rather than leave them to the certain judicial experiments characteristic of many foreign jurisdictions.”²⁷⁸ Expropriation is one of the instances where the law provides for compulsory mitigation in the words of Krzeczunowicz. Although the Civil Code’s section on expropriation (Arts. 1460-1488) protects the expropriated owner’s rights to compensation, “the amount of compensation is restricted by the three sub articles (Arts 1474(1), 1475(1), and 1476), which seem to be neither well understood nor fully applied.”²⁷⁹

In the first place, Art. 1474 (1) of the C.C which reads “The compensation ... is equal to the amount of the present and certain damage caused the expropriation.”²⁸⁰ It limits compensation to present and certain damage. This in turn has implication that: (i) future loss is not compensable although certain to occur, and (ii) uncertain harm (loss of a likely opportunity for a higher price sale) is not compensable although presently incurred.²⁸¹ Secondly, Art 1475 (1), which said to be

²⁷⁵ Supra note 47 p.12

²⁷⁶ George Krzeczunowicz, *The Ethiopian Law of Compensation for Damage*, (Addis Ababa University, Faculty of Law, 1977), p.41

²⁷⁷ Id, p.34

²⁷⁸ Id, p.79

²⁷⁹ Id p.172

²⁸⁰ George Krzeczunowicz believes that the English Version of this sub article is partly distorted and he quoted the French master text of the part. Ibid

²⁸¹ Id, p.173

incomplete and distorted in its English version by G. Krzeczunowicz and suggested the French master-text to be better as quoted “In its Valuation, the committee takes into account the party’s prior consent declarations to the administration regarding the value of the property or rights expropriated”²⁸² said to have the following limitation. If in prior declaration made to the Administration the claimant valued his property at less than its normal price, he is no more entitled to the latter. It is argued that “the Appraisal committee or the court can, in its valuation, take him at his own word despite that his prior declaration was not made for expropriation purposes but, e.g., in order to pay a low rate or transaction tax which, of course indicates unaware of foreign legal systems.”²⁸³ In the third place, Art 1476 (2), which provides that “The appraisal committee takes no account of the speculative appreciation of the property caused by the announcement of the public works”. After a “declaration of public utility” (Art 1463) is made with respect to a public works project requiring expropriation, the price of contiguous properties often increases before the condemned immovable are determined (Art 1466), appropriated (Art. 1467) and appraised (Art.1473). However, it’s on the immovable’s value before the initial declaration announcing the public works that the compensation of the expropriated owner is based. Therefore, the latter loses the added value which the non expropriated contiguous owners retain.

The FDRE Constitution requires the government to pay compensation “commensurate to the value of the property” taken,²⁸⁴ of course, without further defining what constitutes “commensurate.”²⁸⁵ The Civil Code of Ethiopia adopts principle of indemnity by stating that “the amount of compensation or the value of the land that may be given to replace the expropriated land shall be equal to the amount of the actual damage caused by expropriation.”²⁸⁶ This implies the idea that the holder must be indemnified for the whole loss he has suffered due to the expropriation, save the limitation discussed so far.

²⁸² Id, p.174

²⁸³ Ibid, in foreign systems, the rules regarding expropriation are found in public rather than private law legislations.

²⁸⁴ See FDRE Constitution, 1995, Art.40 (8). This principle is also found in other regional states’ constitutions, including Oromia, which is the subject of this study.

²⁸⁵ The common dictionary meaning of this word is “equal”, “appropriate” or “adequate.”

²⁸⁶ Civil Code, Article 1474 (1), see also Art.1475(2)

The current Federal rural and urban land proclamations²⁸⁷ and regulations²⁸⁸ give significant concerns to the issue of compensation and the principle of market value in the country. In this respect, Art 7(3) of Proc No.456/2005 stipulates that holder of rural land who is evicted for purpose of public use shall be given compensation proportionate to the development he has made on the land and the property acquired or shall be given substitute land thereon.” The Lease Proclamation (Proc. 272/2002) likewise states, under Article 15(3), that the “lease-hold possessor shall be paid commensurate compensation.” Art.7 (2) of proc No.455/2005, which states that “The amount of compensation for property situated on the expropriated land shall be determined on the basis of replacement cost of the property”; while Art. 33(1) of Regulations No. 135/2007 provides that “The amount of compensation for a building shall be determined on the basis of the current cost per square meter or unit for constructing a comparable building.” Cumulative reading of words and phrases used in these legislations such as, “commensurate”, “proportionate to”, “replacement cost” and “on the basis of the current cost” envisages the fact that the landholder should be indemnified on the basis of market value.

In addition to Federal Laws, proclamation No.130/2007, proclamation to amend the proclamations No.56/2002, 70/2003, 103/2005 of Oromia Rural Land Administration and Use, provides “any individual or organ whose land holding is taken for public uses shall have the right to get compensation for his properties and benefits he gets proportional to replacement for his holding”²⁸⁹ which affirms the argument that principle of indemnity is employed under the Ethiopian laws.

3.3.4 Notion of “Just” or “Commensurate” Compensation

In the foregoing sections, it has been seen that payment of compensation is one of the important preconditions for expropriation in almost all laws governing the subject in different parts of the world. However, the terms used in different legislations differ according to the type of the legislations and the question rests on the amount of compensation. For instance, compensation,

²⁸⁷ Currently, at the Federal level, we have two main urban as well as rural land proclamations, one Federal Lease Proclamation, and another Federal Expropriation Proclamation.

²⁸⁸ There is a detailed regulation that deals with the formulas and manners of compensation and valuation of expropriated properties (Regulation No.135/2007). This is a regulation to implement the expropriation proclamation No. 455/2005.

²⁸⁹ Oromia Rural Land Administration and Use Proclamation, Proclamation No.130/2007, Art.6(11)

fair compensation, just compensation, reasonable compensation, adequate compensation or commensurate compensation are among the common terms used to refer to the compensation payable up on expropriation.²⁹⁰

The phrase “just compensation” is used in the Fifth Amendment of the United States constitution. It provides in its relevant part that “private property shall not be taken for public use without just compensation.”²⁹¹ This provision does not prohibit the taking of private property; rather it is designed to secure compensation in the event of expropriation. Then what does “just compensation” mean? The fundamental principle that guides valuations under expropriation laws in all Western countries and most developing countries is the payment of “fair market price” (or market value).²⁹² “Just compensation” is the market value of the property taken, or so the courts have held; the owner ordinarily receives nothing for inconvenience and sentiment.²⁹³ In America, compensation as a principle paid in money while Market value is generally taken as a test for the existence of just compensation.²⁹⁴ Market value is defined as:

*“the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.”*²⁹⁵

It has been seen that, under the indemnity principle, the measure of compensation where all of a person’s land is taken is the fair market value of the property as of the time of the taking.²⁹⁶

²⁹⁰ Daniel W/Gabriel, supra note 82, p.203

²⁹¹ B. Burke, A.M. Burkert and R.H.Hermhoz, *Fundamentals Law of property*, (2nd ed. Lexisnexis, Batthew Bender and Company Inc., 2004), p.770

²⁹² Kitay, M.G. (1985). *Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector. A Lincoln Institute of Land Policy Book, Oelgeschager, Gunn & Hain, Publishers, Inc. USA ISBN0-89946-192-1*, 50

²⁹³ Harvey Yates, *Condemnation in the USA and Venezuela: Comparative legal study*, Lawyer of the America, cites Roberts, *Land Use Planning*, 7-157 (1971)

²⁹⁴ Ibid

²⁹⁵ Appraisal Institute *The Appraisal of Real Estate*, (2001), Appraisal Institute, Chicago, Illinois, 12th ed. ISBN 0-922154-67-8, p.22 also cited in Daniel, supra note 46, p.203-204

²⁹⁶ Daniel, supra note 82, p.204

Nevertheless, the measure may be modified where only a part of the land is taken, which is as follows:

*Fair market value of the portion taken plus damages to the part not taken less any special benefits to the land not taken, this is the “value plus damages” rule.*²⁹⁷

The experience of the United States’ courts shows that market value can be seen from two points. Firstly, in what is termed as the “willing buyer-willing seller” test, the market value of land is the amount that the property would be reasonably worth on the market in a cash sale to a willing buyer if offered for sale by a prudent and willing seller and as such the buyer would not pay more than the value of his expectation from the use of the land.²⁹⁸ Secondly, according to “the highest and best use” rule, the price offered must be what a reasonable buyer would pay for the highest and best use of the land.²⁹⁹ Accordingly, at present, in the United States, the fair market value of the land for its highest and best available use is said to be the standard measure of compensation, which indicate the payment of high amount of compensation.³⁰⁰ Therefore, just compensation means the fair market value of the property taken at the time of taking. It is worth noting that market value is not the sole measure of just compensation for there are situations where this standard is inappropriate; particularly, when the market value becomes too difficult to find or its application results in manifest injustice to the owner of the property or the public.³⁰¹

Under the Ethiopian laws, the phrase “commensurate compensation”³⁰² is employed instead of “just compensation”. The common dictionary meaning of this word “commensurate” is “equal”, “proportionate”, “appropriate” or “adequate”, which nearly means “just”. On the other hand, it is argued that the absence or presence of words like “just”, “fair” or “commensurate” cannot cause any substantive change on the concept of compensation and the word “compensation” can fully stand without such adjectives.³⁰³ In a similar vein, it has been asserted that “since the idea of

²⁹⁷ R.W Wright and M. Gitelman, *Land Use in a Nut Shell*. (2000), 4th ed., West Group, St. Paul, Minn. ISBN 0-314-23859-X. p.157

²⁹⁸ Daniel, supra note 82

²⁹⁹ Wright and Gitelman, supra note 84, p.157

³⁰⁰ Kratovil, and Harrison, supra note 90, p.616.

³⁰¹ Ibid

³⁰² See Article 40(8) of the FDRE constitution, other regional states’ constitutions as well as subsidiary federal and states’ legislations.

³⁰³ Daniel, supra note 82, p.206

compensation itself implies a full and complete recompense, the word “just” apparently was added in order to emphasize the equality required of the exchange”³⁰⁴; and “these words are merely epithets rather than qualifications and add nothing to meaning”³⁰⁵ Therefore, according to these arguments, different adjectives added to the word compensation are there to give more emphasis, rather than having separate legal significance. Likewise, one writer argued that “In the Ethiopian laws also, omission from or addition to the term “compensation” words like appropriate, commensurate, fair or just would not change the meaning of compensation as it is understood elsewhere.”³⁰⁶

It is the contention of this writer, however, that the presence of the adjectives like “just” “fair”, “adequate” or “commensurate” before the word compensation plays crucial role in setting a benchmark to determine the amount, mode and even time of payment of compensation. This is because it qualifies the word “compensation” in such a way that compensation should be “just” not only in case of payment (i.e., in cash or in kind) but also in the case of timely payment for both parties. To take an example, how could the payment of compensation be “just” if it is not paid timely or promptly? After all, if the adjectives such as “just”, “commensurate”, “appropriate”, “fair” are there only to add emphasis, then why the constitutions of many countries³⁰⁷ employ such terms? Are such adjectives there only to emphasize that compensation should be paid? It doesn’t seem so. Rather, these words have their own roles in determining the amount, mode and time of payment of compensation which go beyond adding mere emphasis.

³⁰⁴ Alabama Section, Eminent Domain: A Survey of Alabama Law. *Alabama Law Review*. Vol. 28,(1976), p. 418

³⁰⁵ Sullivan, R.M. “Eminent Domain in the United States: An Overview of Federal Condemnation Proceedings”, In G.M. Erasmus (Ed.), *Compensation for Expropriation: A comparative Study*. St. Edmund Hall, University of Oxford Vol. I, (1990),p. 166

³⁰⁶ Daniel, supra note 82, p.206

³⁰⁷ For instance, the US Constitution requires “just compensation” for all takings of private property (US Constitution, Amendment V). The Philippine Constitution similarly requires that “payment of just compensation must be made”(Philippine Constitution, Art. III, § 9). Brazil’s Constitution also contains a “just compensation” clause (Brazil Constitution, Art. 153, Para. 22 (amendment 1). In Cambodia, the Constitution mandates that the state make “fair and just compensation” for taking possession of land from any person (Cambodian Constitution, Art. 44). Some countries have what appears to be a milder constitutional requirement. In the Peoples’ Republic of China, not until 2004 was the Constitution amended to require the state to make “reasonable compensation” for land expropriation (The People’s Republic of China Constitution amendment, art. 10 (2004)). Before the amendment, the Constitution merely required the state to provide “compensation” for land takings. Based on constitutional requirements, many countries have developed standards for determining “just compensation.” Most high- and middle-income countries with well-functioning legal systems have adopted “fair market value” of the expropriated asset as the standard for determining compensation for state expropriations.

CHAPTER FOUR

4. Issues of Expropriation in Oromia: The Law and the Practice

This chapter examines the law and the practice regarding the assessment and adequacy of compensation for expropriation in Oromia. It begins with the brief review of applicable law for valuation and assessment of compensation for lands expropriated for public purpose in the research site (the Eastern Industry Zone). Then it presents the analysis of some issues of expropriation with specific reference to power of expropriation of landholdings and how it is being exercised, the notion of public purpose in law and in practice and how it is determined by the competent authorities and judicial review mechanism ,if any, responsibilities of competent authorities, procedures for expropriation of landholdings. In the second part, it critically analyses issues related to Assessment of Compensation for expropriation of rural landholdings including right to compensation for expropriation of use right, determination of compensation (valuation system and mandate to value, basis of compensation). In the third place, this chapter deals with the issue related to calculation of the amount of displacement compensation in rural and peri-urban areas. It focuses on the determination of monetary compensation for permanent and temporary termination of use rights and difficulty of land to land compensation.

4.1 An Overview of Applicable law for Assessment of Compensation in Eastern Industry Zone

As has been seen so far, the Oromia regional state has adopted laws for rural land use and administration modeled after the federal laws since 2002. The laws have also undergone amendments for several times. However, while the federal government has adopted legislation governing “Expropriation of Land for Public Purposes and Payment of Compensation” in 2005 and implementing regulation in 2007, the Regional State has opted to apply the principles enshrined in these federal laws instead of adopting its own counterpart. It has been argued that the federal law has been applied in Oromia for some reasons. In the first place, it is believed that since the power to enact laws for the utilization and conservation of land is vested in the federal government³⁰⁸, the application of this law maintains uniformity of practice regarding payment of compensation throughout the country. It has, particularly, been asserted that there is no federal

³⁰⁸ FDRE Constitution, 1995, Art.51 (5)

rural land to be administered by the federal government. As can be evidenced from the Federal Rural Land Administration and Use Proclamation No.456/2005, the federal law can be applied to any rural land in Ethiopia.³⁰⁹ This means, regional States may safely apply this very legislation or adopt this law by their respective legislative organ.³¹⁰ Secondly, it is argued that the federal proclamation (Proc No.455/2005) and regulation (Regulation No.135/2007) are sufficient in addressing problems related to rural land expropriation and assessment of compensation thereof.³¹¹ According to the concerned public officials, the principles of expropriation of rural landholdings and assessment of compensation are sufficient in addressing problems that have been practically materialized in the Oromia Regional State and duplication of such rules by adopting them in the regional legislations would not bring substantive change.³¹² Since, as a matter of principle, regional governments are not in a position to divert from the principles contained in the federal land laws, although it may sound loud in theory, it seems unwise to expect significant improvement in practice.³¹³ It has also been claimed that there is no compelling problems that call for the adoption of regional expropriation of rural landholdings and payment of compensation in the regional state in general and the research site in particular.³¹⁴

Nevertheless, the law presupposes that land taking by regional government agencies will be governed by regional regulations.³¹⁵ The absence of regional land expropriation and compensation regulations has resulted in the lack of standardized valuation and compensation methods and procedures which are causing different valuations by different land taking agencies, resulting in different compensation values for similar lands.³¹⁶

³⁰⁹ Federal Rural Land Administration and Use Proclamation No.456/2005, Art.4

³¹⁰ Interview with Ato Ababe Fite, Oromia Justice Bureau, legal drafting and enactment department head, June 22, 2011, interview with Ato Dawit Mokonnen, Akaki Woreda Administration Head, Interview with Ato Chala Bekele, in Dukem Municipality land administration office vice chairman and cadetral department head, August 8, 2011

³¹¹ Ibid

³¹² Ibid

³¹³ Ibid

³¹⁴ Ibid

³¹⁵ Proc No.455/2005, Art.14 (2)

³¹⁶ For instance, the practice in Eastern industry Zone shows that there is variance between calculation of compensation for the expropriation of rural land by the Woreda administration and urban administration.

In the coming section, the pertinent land laws being applicable in the Eastern Industry Zone (Dukem and its surrounding) will be analyzed in light of the practice prevailing there.

4.2 Expropriation of Landholdings in Eastern Industry Zone

Under this section, the paper devotes to seeing issues related to the manner and causes of expropriation in light of the applicable laws and the practice in the research site of the study.

4.2.1 Power to Expropriate Landholdings

Expropriation of landholdings for Public Purposes and Payment of Compensation Proclamation No.455/2005 authorizes woreda or urban administration to expropriate landholdings in the Oromia regional state in general and Dukem area (research site of this study) in particular. Pursuant to Article 3 of this Proclamation “*A woreda or an urban administration shall, upon payment in advance of compensation in accordance with this Proclamation, have the power to expropriate rural or urban landholdings for public purpose where it believes that it should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.*” Accordingly, the Akaki Woreda and/or Dukem town municipality (administration) have been authorized to expropriate rural landholdings for public purpose where it believes that such land should be used for a better development project to be carried out by public entities, private investors, cooperative societies or other organs, or where such expropriation has been decided by the appropriate higher regional or federal government organ for the same purpose.

These competent authorities determine and decide the expropriation to be in the public interest when they believe that a land should be used for a better development project to be carried out by public entities, private investors, cooperative societies, or other organs.³¹⁷ Similarly, the expropriation of property right can be decided by the appropriate Higher Regional or Federal Government organs.³¹⁸ This means, if a decision to expropriate property right of private individuals is passed by either of these organs, no one may question the purpose as to whether or

³¹⁷ Proc No.455/2005, Art.3

³¹⁸ Ibid

not to constitute “public purpose’ in fact, as it is simply presumed that taking is for “public purpose.”³¹⁹

However, as human being is not free of defect, it would not be wrong to assume that this power could be abused. The determination that solely based on the ‘*belief of the competent authorities*’ and the fact that it is for carrying out of ‘*better development project*’ is susceptible to abuse of such power. This is because; there is no clear standard or meaning as to what truly constitutes “*a better development project*.” Then, the issue here is whether or not regular courts in Ethiopia have the power to determine what has been decided by the competent authorities in fact constitute a public purpose or not. In this regard, it is fair to ask, in the first place, whether there is a prohibition of such a matter to be heard by courts in the relevant laws of the country. However, this writer has attempted his best to find out court cases in which the existence of public interest with regard to expropriation of land use right was challenged but without success. Thus, challenging of such cases has never been attempted at court of law.

Although the current federal as well as regional land laws are silent on the jurisdiction of courts to review the administrative decisions with respect to public purpose requirement, Art.15 (2) (e) of the Civil Procedure Code gives the High Courts exclusive jurisdiction to entertain suits regarding “expropriation and collective exploitation of property.”³²⁰ Since this provision ³²¹ is not inconsistent with the proclamation³²² nor does it deal with the matters provided for under the proclamation, its applicability cannot be challenged.

As has been discussed in the foregoing sections, the term expropriation is broad concept and has some elements such as the government power of expropriation and competent organs entrusted with such power, public purpose requirement and procedures to be followed to determine it, payment of just or fair amount of compensation, etc. It has also been discussed that land should

³¹⁹ Interview With Ato Chala Bekele, Dukem Municipality Land And Administration Office, August 8, 2011, Interview with Ato Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person Of Land Valuation And Compensation Committee Of The Woreda, July 12, 2011

³²⁰ Civil procedure Code of Ethiopia, 1965, Art 15 (2) (e), Pursuant to Federal Courts proclamation No.25/1996, Art.37 (2), Civil Procedure Code can be Applied.

³²¹ Civil procedure Code of Ethiopia, 1965, Art 15 (2) (e),

³²² proclamation No.25/1996, Art.37 (2)

not be expropriated except for genuine causes of public purposes. Furthermore, the public purpose requirement should not be a looming crisis in which the government abuses the constitutional right to private property. Therefore, the jurisdiction of the courts should be extended to determine whether what has been decided by the public officials really constitutes public purposes to serve the interest of justice. The role of competent and independent judiciary is highly crucial in protecting the rights of citizens against abuse of power by the government. The government should not take private property to further interests other than genuine public purpose and dare to pay compensation.

In general, the absence of provisions dealing with review mechanism in the relevant and specific land laws should not be interpreted as if courts lack jurisdiction to review the decisions of administrative bodies regarding the issue of public purpose. Thus, Art.15 (2) (e) of the Civil Procedure should be applicable as it has importance and is not clearly repealed by the subsequent legislations. In practice, the public authorities believe that the decision of the competent authorities is final and regular courts do not have any legitimate power to review such decision.³²³ The farmers whose use rights over their landholding have been taken also do not believe they have the right to challenge the decision of the administrative authorities regarding the issue of public purpose and its implementation before the regular courts³²⁴. This seems to emanate from the lack of awareness on the scope of their rights in relation to the issue at hand.³²⁵ There is also a fear on the part of the government to vest to courts the power to decide as to the existence of public purpose on the issue of expropriation³²⁶. According to the authorities allowing the court to entertain such cases may bring delay of the project which discourages the investors. However, this writer is of opinion that such an argument is unjustifiable given the constitutional rights of the citizen and the government is expected to facilitate a separate bench within a regular court to entertain the case so as to give speedy justice on the issue at hand.

The other problem regarding “public purpose” and expropriation of landholdings in the Dukem town and its surrounding is that the land taken from the farmers and given to the private

³²³ Interview With Ato Chala Bekele, Dukem Municipality Land And Administration Office, August 8, 201

³²⁴ Confidential interview with affected farmers, Akaki Woreda Kebele Gogecha, September 12, 2011

³²⁵ Interview with Ato Tamiru Amanu, Civil Bench Judge at Akaki Woreda Court, August 8, 2011

³²⁶ Interview With Ato Chala Bekele, Dukem Municipality Land And Administration Office, August 8, 2011

individuals under the guise of investment is not cultivated in the agreed time and manner. Different individuals have taken land from the Dukem town and Akaki Woreda Administration for construction of different buildings to be used for plantation of industries and industrial zones, real estate developments (such as Abu Dhabi real estate), construction of religious institutions, dwelling houses, hotels and other public utilities such as road and railway. However, in most cases, the expropriated land has not been utilized for the intended projects in the manner and time agreed in the lease contracts. Some of the reasons could be attributable to the financial capacities of the investors.

The so called “investors” come up with project to invest without having that capacity. The authorities expropriated farmers use right under the guise of the fulfillment of more important purposes. There has been great corruption related to land expropriation in the name of public purposes. The public authorities working with the issue of rural land expropriation have been corrupted by individuals who exploited the land taken for public purposes. The ‘investors takes the land not invest but to sale it under ground with high price. The authorities have been violating the constitutional provision which prohibits sale of land. ³²⁷

For instance³²⁸, a lease contract that the Dukem Municipality concluded with an investor called “Africa Equipment Part Service PLC” on February 8, 2004 in which the lessee did undertake to construct heavy duty equipments, has stayed idle for two years and terminated on 15 Nov, 2006 due to the reason that the lessee has failed to implement the intended purpose in the agreed time. The Lessor did not claim compensation for the non performance of the lease contract. There was no additional measure that the implementing agency took against the investor. This situation indicates one of many failures of expropriation purposes in which the land was rendered unproductive for couple of years. One of the authorities in Akaki Woreda Administration has to say the following:

*Many individuals simply fence the land they take and sale it underground.
Others change the original purpose for which land was expropriated. Worst*

³²⁷ Confidential Interview with some workers, Dukem Municipality, August 5, 2011

³²⁸ Investigation of the files of the investors, by the author, Dukem Municipality, August 8, 2011

of all, most of rural and urban land expropriated stay idle for couple of years while the farmers whose landholdings have been taken are displaced from their life due to inadequacy of compensation paid to them and partly for mismanagement of the money they acquired in the form of compensation. This is mainly caused due to lack of supervising capacity. More over, the failure of the investors to utilize the expropriated land for the intended projects in the manner and time agreed in the lease contracts ultimately brought food insecurity in Ethiopia in general and in oromia in particular³²⁹ .

Further ,some affected farmers³³⁰ in Akaki Woreda disclosed that the government has been selling their landholding in the form of lease while they have seen the land taken from them for 50,000 Birr has been resold for 150, 000 Birr by the individuals who took them under the guise of undertaking public purpose projects. They also believe that the government has not been following up whether the land has been utilized in the agreed time and manner. The maximum penalty that the individuals who took the farmer's land from the hands of the government face is dispossession of that land even after ten or more years.³³¹ The farmers argued that they have been exploited under the guise of the fulfillment of more important purposes. They also believe that there has been great corruption related to land expropriation in the name of public purposes. The public authorities working with the issue of rural land expropriation have been corrupted by individuals who exploited the land taken for public purposes. The farmers cite some public authorities who have been working in the regional investment bureau, land management and urban administrations bureaus at all levels who have built interconnection for the sake of benefiting from the act of corruption related to both rural and urban land. Specially, an elder residing in the Akaki Woreda since his birth has disclosed the fact that

Public authorities were not ready to take any measure on the individuals who fail to construct public interest works on the land in the agreed time. They

³²⁹ Confidential Interview with an authority , Akaki Woreda Administrator, August 5, 2011. According to the interviewee the area was known by its teff production .Now the production of teff in the area is significantly reduced which ultimately increased the price of teff from birr 350 to birr 1200 per quantal.

³³⁰ Confidential interview with affected farmers, Akaki Woreda Kebele Gogecha, September 12, 2011

³³¹ Art. 3 (2) of Proc No.455/2005 provides that ,...” no land lease holding may be expropriated unless the lessee has failed to honor the obligations he assumed under the Lease Proclamation and Regulations or the land is required for development works to be undertaken by government.”

*rather trade with such individuals and no one would worry for the well being of the farmers. Rural land has been taken without sufficient expropriation procedure, particularly, following the 2005 National Election.*³³²

Most farmers said that they are displaced from their landholdings which have been source of their life for tens of decades without sufficient compensation that may help them reinstate to their original life.³³³ There have been times in which they were forced to hand over their landholdings only for 90 cents per square-meter. The farmers also disclosed that the public authorities have deceived them during the 2010 election that they will be given 400 square-meter of land from the urban administrations, which remained night mare afterwards. Some affected farmers sadly expressed their grievances that they are left without anything while many individuals became rich by trading on their landholding expropriated.³³⁴ In general there has been great exploitation of farmers' rights until 2001 E.C when the government banned the distribution of land to the individuals who demand it partly for previous land exploitation and partly for real construction of public interests. Due to these discontents, some farmers have reacted to the situation by preemptory informal sale of their land.³³⁵

4.2.2 Responsibilities of Competent Authorities

The Competent Authorities are bound to undertake certain duties with regard to their power of landholding expropriation. Accordingly, woreda and urban administrations have responsibilities and duties to: pay or cause the payment of compensation to holders for expropriated land in accordance with the relevant law and provide them with rehabilitation support to the extent possible.³³⁶ As can be understood from this provision, the expropriating authorities must undertake two major responsibilities. In the first place, they must pay or cause the payment of compensation in advance to landholders. Thus, it is a principle of the law that any decision for rural land expropriation must be followed by payment of advance compensation. This seems to imply that payment of compensation should precede the handing over of the landholding rights.

³³² Interview with Garawew Fayissa, Farmer, Akaki Woreda Kebele Gogecha, September 12, 2011

³³³ Confidential interview with Affected farmers, Akaki Woreda Kebele Gogecha, September 12, 2011

³³⁴ Ibid

³³⁵ Confidential Interview with land dealer in Dukem Town, 23 July, 2011

³³⁶ Proc No.455/2005, Art.13

Nevertheless, the interviewed farmers whose land use rights have been expropriated for public purposes said that there are times in which their land has been taken before payment of compensation.³³⁷ In the second place, the law goes further in that the urban and/or woreda administrations are also responsible not only to pay or cause payment of compensation to the dispossessed rural landholders but also to provide them with rehabilitation support³³⁸ to the extent possible. However, this responsibility is not provided in a detailed manner. In the first place, the law does not define what constitutes rehabilitation support. There is no clue whether rehabilitation refers to using resources other than compensation paid to farmers or other resources or a combination of the two. In addition, it is not sufficiently clear in what manner the rehabilitation support should be given to the displaced farmers.

Nonetheless, the practice in Dukem and its surrounding indicates that there have been some efforts to rehabilitate the displaced farmers using the compensation paid to the farmers. For instance, the ex-farmers are required to open Bank account in a Commercial Bank and requested to be organized to invest the money they received in lieu of the use right terminated³³⁹. The government organs such as the *woreda* and urban bureau of rural and agricultural development, bureau of labour and social affairs and regional bureau for expansion of cooperatives have been giving rehabilitation support for displaced landholders.³⁴⁰

However, the effort did not bear significant fruits on the life of the displaced due to two main challenges. Firstly, the concerned government officials couldn't create awareness on the benefits of working in the form of cooperatives. Accordingly, due to lack of awareness, some dispossessed ex-peasants have spent the money received extravagantly. This failure mainly emanates from the failure of the concerned government organs to convince the farmers. Particularly, the concerned organs have been criticized for lack of commitment in creating awareness as to the fate of farmers in relation to the issue. The main failure cited here is that the government organs do not undertake studies on the viable potential economic activities and

³³⁷ Supra Note ,at 26

³³⁸ Supra Note ,at 29

³³⁹ Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011

³⁴⁰ Interview With Ato Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person Of Land Valuation And Compensation Committee Of The Woreda, July 12, 2011 ,Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011.

provide proposals on how to work on such specific business ideas. They would like to talk some time that being organized is good thing. Rather, they couldn't practically work with the farmers to rehabilitate them. Telling the farmers once up on a time that they should wisely invest the compensation money either individually or in group might not be understandable to the farmers and pastoralists who have no experience and know how to invest on economic activities other than agriculture. Therefore, the concerned government officials should have gone further steps in creating awareness through training to help displaced rural farmers reinstate their life. The one-day speeches of local politicians without heartily commitment cannot work to rehabilitate the displaced peasants unless confusing them. The second challenge is said to be emanated from the peasants themselves. Some dispossessed farmers have challenged the effort of the public officials that they have rights over their money and no one may obey them to do that or this with their personal property although they have been explicitly told that they should be given rehabilitation support with the money they received as compensation for their landholding right terminated once and for all. The peasants also do not trust the public officials that they may take their money as they took their landholding so far. Thus, they sometimes turn deaf ear to the advice of such officials.

In general, there are a lot of story of failures in Dukem town and its surroundings in relation to expropriation of rural landholdings. A number of families have been displaced from their rural livelihood and migrated to urban areas to work on exploitive labour, prostitution, begging and others. Although the law obliges the concerned public authorities to work towards rehabilitation of displaced farmers, the intention of the legislature has remained almost a dream partly due to failure of the concerned government officials to work towards the realization of this objective with commitment of helping the affected rural residents and partly because of the inadequacy of the amount of compensation paid as will be discussed in what follows in detail.

4.2.3 Procedures for Expropriation of Landholdings

The expropriation of rural landholding should be accompanied by certain procedures. The main procedure to be followed in accordance with Proclamation No. 455/2005 is that expropriation

order must be notified to the landholder.³⁴¹ Accordingly, where a *woreda* or an urban administration decides to expropriate a landholding, it must notify the landholder, in writing, indicating the time when the land has to be vacated and the amount of compensation to be paid.³⁴² Here, it is worth noting that notification order is not aimed at securing the consent of the landholder; rather it is simply to notify him/her that his/her landholding is going to be expropriated and s/he must get ready to vacate the land on the specified time and will be paid the specified amount of compensation. As can be discerned from this provision, the land holder will not be given a chance to participate in the process of assessment of the amount of compensation.

It is also provided that the period of notification to be given in this regard must not be less than ninety days.³⁴³ A rural land holder who receives notification of expropriation order must hand over the land to the *woreda* or urban administration within 90 days from the date of payment of compensation or, if he refuses to receive the payment, from the date of deposit of the compensation in a blocked bank account in the name of the *woreda* or urban administration as may be appropriate.³⁴⁴ This provision indicates the time of payment of compensation in that the compensation must be paid before the landholder relinquishes his landholding rights to the expropriating authority. The time of 90 days also starts to count from the date of payment of compensation or from deposit of the compensation in a blocked bank account in the name of the *woreda* or urban administration as may be appropriate in case the landholder refuses to receive the payment. However, the time in which the landholder should hand over the land to the *woreda* or urban administration will be reduced to 30 days from the date of receipt of the expropriation order where there is no crop or other property on the expropriated land.³⁴⁵

The question here is should the landholder handover his landholding even before accepting compensation? Should s/he relinquish his/her holding right once s/he receives the expropriation order where there is no crop or other property on the expropriated land? It is not clear as this provision is silent on this issue. Furthermore sub-article 5 of Article 4 rules that the *woreda* or urban administration may use police force to take over the land where a landholder who has been

³⁴¹ Proc No.455/2005, Art.4

³⁴² Id, Art.Art.4 (1)

³⁴³ Id, Art.4 (2)

³⁴⁴ Id, Art.4(3)

³⁴⁵ Id, Art.4 (4)

served with an expropriation order refuses to handover the land within the period specified in Sub-Article (3) of (4) of this Article. The interview conducted with farmers surrounding the Dukem town shows that there have been cases where the land holders were forced to handover their landholding even before compensation is paid. The question to be raised time and again is that “Is it the intention of the legislature that land may be taken before payment of compensation?” If it is so, then is it justifiable to force landholders to handover their land even without any form of compensation?

The practice in Dukem and its surrounding shows that some peasants have been forced to handover their landholding and they have been denied payment of compensation on time. For this reason, some farmers whose landholding rights have been terminated without payment of just compensation have resisted the taking of their land. For instance, in the Kebele called “Dadacha” the farmers refused to hand over their landholding and re-plough it while the police took them to jail.³⁴⁶ Such disputes have been brought before the Akaki woreda court in which the government is ordered to pay the assessed amount of compensation promptly.³⁴⁷

Nevertheless, it is not clear why the payment of compensation becomes difficult in according to the applicable law as it obligates the Implementing Agency³⁴⁸ : to prepare detail data pertaining to the land needed for its works and send same, at least one year before the commencement of the works, to the organs empowered to expropriate land in accordance with this Proclamation and obtain permission from them; and pay compensation pursuant to relevant law to landholders whose holding have been expropriated.³⁴⁹ Moreover, as has been discussed in the second chapter of this paper, the peasants have lifetime use rights over their landholding and such right cannot be terminated except in case of expropriation for public interests upon payment of commensurate compensation. Thus, the rural landholding may not be terminated without advance payment of compensation.

³⁴⁶ Interview with Ato Habebe Heeyii, Farmer and resident of Dukem Town, 11 August, 2011

³⁴⁷ Interview with Ato Tamiru Amanu, Civil Bench Judge at Akaki Woreda Court, August 8, 2011

³⁴⁸ Proc No.455/2005 Art.2 (7) defines “implementing agency” as “a government agency or, public enterprise, undertaking or causing to be undertaken development works with its own force or through contractors.

³⁴⁹ Proc No.455/2005, Art.5

4.3 Assessment of Compensation in the Eastern Industry Zone

4.3.1 Right to Compensation for Expropriation of Rural Land Use Rights

The basic principle of compensation entitles the owner to the value of property in its actual condition at the time of expropriation notice with all its existing advantages, a principle connected to the right to property.³⁵⁰ In a full concordance with this principle, the Constitution of the Federal Democratic Republic of Ethiopia has explicitly guaranteed the owner of property that compensation “commensurate” to the value of property must be due in advance when government expropriates private property for public purpose.³⁵¹ This is also inline with the principle of compensation which states *Damages* equal to *Damage*.³⁵²

However, in Ethiopia in general and Oromia in particular, the right to compensation for termination of use rights is controversial. This controversy arises from the provision of the constitution which states that “government may expropriate *private property* for public purposes subject to payment in advance of compensation *commensurate to the value of the property*.”³⁵³ As the private ownership of land is clearly prohibited by the Constitution,³⁵⁴ it seems to exclude land from the sphere of compensable interest. The argument here is that since land is property of state, the government does not pay compensation for its own property that it takes for the advancement of public purposes. As is defined by the constitution itself, “private property” is “*any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common*.”³⁵⁵ Thus, as can be discerned from this definition, land is far from being included in the realm of private property, as it cannot be produced by the labour, creativity, enterprise or capital of an individual citizen and associations which enjoy juridical personality under the law. Accordingly, pursuant to these provisions of the constitution (i.e., Art. 40 (2 and 8)), it might be said that the right to compensation for the expropriation of landholding may not

³⁵⁰ R.M. Muzeffar, *Compulsory Acquisition of Land*, (Lahore, Civil law Publications, 1970), p.114

³⁵¹ The Constitution of Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, Fed.Neg.Gaz .Art.40(8)

³⁵² Civil Code of Ethiopia, 1960, Arts. 2090(1) & 2091

³⁵³ FDRE Constitution of 1995, Art.40 (8)

³⁵⁴ Id, Art.40 (3)

³⁵⁵ Id, Art.40 (2)

extend to land itself except to immovable property one builds on it and to the permanent improvements s/he brings about on it by her/his labour or capital as has been provided under Sub-Art 7 of Article 40 of the Constitution. This means, a peasant or pastoralist whose landholding is expropriated may claim compensation only for private property s/he builds on the land and the permanent improvements he made on the land by his labour or capital.

The question remains to be answered yet is “would the fact that land is public property and not private entail that landholders not to have any right to claim compensation for dispossession of their holdings?” In order to answer this question, one has to critically examine other relevant provisions of the Constitution and other subsidiary laws on the extent of the rights of the rural landholders. As has been discussed in the second chapter of this paper, the rural landholders (peasants and pastoralists/semi pastoralists) are guaranteed the right against eviction by the FDRE Constitution and the Oromia Regional State Constitution. The constitutions provide that “Ethiopian peasants and pastoralists have right to obtain land without payment and they are guaranteed the protection against eviction from their possession”³⁵⁶, respectively.

Although the constitutions provide for public ownership of land in the country, the rural dwellers are guaranteed rights against dispossession in a similar fashion. In other words, peasants and pastoralists are entitled to use rights over rural lands. Taking into consideration the fact that the FDRE constitution is too general to stipulate the details, the particulars of such rights are left to be specified by subsidiary laws.³⁵⁷ To this end, FDRE Rural Land Administration and Land Use Proclamation No.456/2005 provide for the duration of rural land use right in such a way that “The rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit.”³⁵⁸ Pursuant to this legislation, the lifetime use right over the rural lands may not be restricted except in case where the land is required for more important public uses.³⁵⁹ In the same vein, the Oromia Regional State Rural Land Administration and Land Use Proclamation No.130/2007 reaffirms the fact that rural land users have the lifelong rights over their

³⁵⁶ See FDRE Constitution and Oromia Regional State Constitution Arts.40 (4) & (5)

³⁵⁷ Ibid

³⁵⁸ Proc No.456/2005, Art.7(1)

³⁵⁹ Oromia Rural Land Use and Administration Proclamation ,Proclamation No.130/ 2007, Art.6(10)

landholdings and their right may not be restricted except in case of expropriation of such land for public purposes under the condition of payment of compensation.³⁶⁰

Thus, even if the rural and urban land in Ethiopia is owned by the public, this does not mean that private holders have no right over their possession. The holders of the land have lifetime use right over their holdings and they also constitutionally guaranteed the right against dispossession. It is also true that the constitution provides for the right to claim compensation for dispossession of private property. The constitutional guarantee against dispossession of the use right over the landholding should include the right to claim compensation for taking of such rights for the reason that if land is to be taken without commensurate compensation, such stipulation would be meaningless.

While the Constitution does not explicitly prohibit payment of compensation for the dispossession of landholding rights, subsidiary laws both at the federal and regional level clearly provide for the right to compensation for the expropriation of rural landholdings.³⁶¹ For instance, the Federal Land Administration and Land Use Proclamation provides that “Holder of rural land who is evicted for purpose of public use shall be given compensation proportional to the development he has made on the land and the property acquired, or shall be given substitute land thereon.”³⁶² What can be inferred from this provision still does not entail the implication that landholder may claim compensation for termination of use right itself as the provision rules that compensation might be claimed for development made on the land by the holder and property acquired on the land. Furthermore, the right to claim substitute land in form of compensation is given as an alternative to the compensation for the development made on the land and private property acquired on the land due to the fact that they are connected by the adjective “or” than “and”. Accordingly, it is still vague whether the law provides for the right to compensation for the termination of use right like in the case of expropriation of private property for the public purposes. It does not give an implication that rural landholders have the right to claim compensation commensurate to the use right terminated due to expropriation.

³⁶⁰ Ibid, Arts.6 and 7

³⁶¹ See Art.7(3) of FDRE Proc. No.456/2005 & Oromia Rural Land proc No.130/2007, Art.6 (11) (12)

³⁶² Proclamation No.456/2005, Art.7(3)

It is also good to examine how the right to compensation for termination of rural land use rights is treated by the Oromia regional State Rural Land Administration and Land Use laws. The current relevant legislation of the regional state (Proclamation No.130/2007) provides for right to compensation for the expropriation of rural land use rights under Art.6 as “Any individual or organ whose land holding is taken for public uses shall have the right to get compensation for his properties and benefits lost beforehand; as much as possible, gets equivalent land individually or in group.”³⁶³ What is interesting in this provision is to ask a question as to whether use right is compensable interest or not. As can be understood from the provision, the right to compensation is provided for properties and benefits lost as a result of expropriation and the law prefers equivalent land to be awarded for the dispossessed individuals or groups.

Nevertheless, it is not clearly provided whether compensation should be paid for the termination of lifelong use rights and in light of the Constitutional guarantee against dispossession of such right. It seems logical to ask what constitutes “...interests lost” in the provision. Does it refer to the lifelong use right over the landholding? If not, what rights do dispossessed landholders have to compensation for *interests lost* as a result of expropriation of landholding rights? What interests other than properties on the land and permanent improvements made to land by the landholders, which are specifically provided, might be claimed as compensation? This writer is of opinion that the term “interest lost” in the provision at hand must be interpreted to include use right terminated since other interests such as private property on the land and permanent improvements made on the land are clearly provided to constitute compensable interests and the law employed the conjunctive adjective “and” in its stipulation.

Moreover, the mode of compensation indicated in the provision may also support this argument in that the right to substitutable land may fully compensate the dispossessed rural landholder including the use right terminated beforehand. The law provides for the land to land compensation as a matter of principle to be a principal form of compensation in case of rural land expropriation in the Oromia Regional State. However, land to land compensation may not be possible due to the absence of substitutable land in the region. Thus, the law provides that compensation for rehabilitation must be paid if it is not possible to compensate dispossessed

³⁶³ Proc No.130/2007, Art.6 (11)

landholders by giving substitute land.³⁶⁴ Compensation for rehabilitation is sought in the second place only where it is difficult to compensate rural landholders dispossessed due to expropriation of land for more important public purposes. There is still ambiguity as to what constitutes “Compensation for rehabilitation” in this Proclamation as the phrase is left without further definition. Since this form of compensation is provided as an alternative to land-to-land compensation, it is fair to argue that such compensation should be based on the indemnity principle with a view to fully reinstate the dispossessed landholders to their original position.

In general, although it is not clear whether the FDRE Constitution and Regional Constitution recognize use right over rural land as a compensable interest during expropriation of such land under Art. 40 (8) that provides for the right to compensation for expropriation of *private property*, the cumulative reading of the constitutional provisions which guarantee the right against eviction from rural landholdings and other subsidiary laws that provide for life time use rights over the rural landholdings show that existing legal framework including the constitution recognizes the right to compensation for termination of rural landholdings because of expropriation for public purposes. Although the ownership of land in Ethiopia is exclusively vested in the state and the people, rural landholders have the lifelong use rights over their landholdings which cannot be terminated except in case of expropriation for the genuine public purpose. Thus, one may argue that peasants and pastoralists may claim compensation not only for private properties on the land and for permanent improvements that they make on their holdings prior to expropriation but also for the termination of use right itself. Despite vagueness on the issue whether use right is compensable interest or not, both the federal and the regional rural land laws provide for the right to compensation for termination of rural land holding. While the Federal Rural Land Administration and Land Use Proclamation No.456/2005 provides for the right to compensation for private properties on the land and permanent improvements made to the land, the Oromia regional state rural land Proclamation No.130/2007 seems to go further in recognizing use right as compensable interest in addition to those provided in the federal law.

³⁶⁴ Id, Art.6(12)

Under the present legal framework, while federal government is vested with the power to enact laws for utilization and conservation of land and other natural resources³⁶⁵...,States are authorized to administer land and other natural resources in accordance with Federal Laws³⁶⁶.To this end, the rural land and use proclamation is applicable to any rural land in Ethiopia as per Art.4 of Proclamation No.456/2005.Further, it is provided that “Where the rural landholder is evicted by federal government, the rate of compensation would be determined based on the federal land administration law .³⁶⁷ However, where the rural landholder is evicted by regional governments, the rate of compensation would be determined based on the rural land administration laws of regions.”³⁶⁸ In this manner, the law presupposes the enactment of regional expropriation laws which would be modeled after the federal laws. It is worth noting here that regional state of Oromia has not yet issued a regulation for the implementation of Proclamation No.455/2005, although the Proclamation empowers the regions to issue such regulation.³⁶⁹

The federal government has enacted a proclamation entitled “A Proclamation to Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation” in 2005. As can be understood from the preamble, this Proclamation was necessitated to satisfy the needs of the government to use land for the development works it carries out for public services and to define the basic principles that have to be taken into consideration in determining compensation to a person whose landholding has been expropriated.³⁷⁰ It is also aimed at defining organs that must have the power to determine and the responsibility to pay the compensation.³⁷¹ Furthermore, Proclamation No.455/2005 has been necessitated to implement the provisions of the FDRE Constitution dealing with the issue of advance payment of compensation for private property expropriated for public purpose as provided for under Article 40 (8) of the Constitution. The critical examination of the provisions of the Proclamation (including title, preamble and specific provisions) reinforce the fact that rights to compensation for termination of landholding use rights is provided under the existing legal framework.

³⁶⁵ FDRE Constitution, Art.51 (5)

³⁶⁶ Ibid, Art.52 (2) (d)

³⁶⁷ Proc No.456/2005, Art. 7(3)

³⁶⁸ Ibid

³⁶⁹ Proc No.455/2005,Art.14(2)

³⁷⁰ Ibid, The Preamble

³⁷¹ Ibid

Furthermore, Council of Ministers Regulation No.135/2007 has been adopted by the federal government to provide for “Payment of Compensation for Property Situated on Landholdings Expropriated for Public Purposes”. As can be seen from the preamble of this regulation, it is sought to achieve the purpose of not only paying compensation in accordance with Proclamation No.455/2005 but also to assist displaced persons to restore their livelihood.³⁷² However, the compensation to be paid for the Expropriation of Land Holdings for Public Purposes in accordance with Proclamation No.455/2005 and its implementing Regulation No.135/2007 seems to be limited to property situated on the land as term "compensation" is defined as “*payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding.*”³⁷³ The wording of this definition tends to exclude compensation for termination of use rights over rural landholdings.

However, the same Proclamation provides for “*Displacement Compensation*” in such a way that “*A rural landholder whose landholding has been permanently expropriated shall be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land.*”³⁷⁴ This provision clearly indicates that compensation must be paid not only for property situated on the land taken and permanent improvement made to the land but also for use right terminated, which may constitute the third category of compensable interests during expropriation of rural land expropriation. Even in the case of temporary dispossession of the rural landholding, it is provided that the holder should be paid compensation until re-possession in addition to compensation for his property situated on the land and for permanent improvements he made to such land.³⁷⁵

As the regional state of Oromia has not yet issued a regulation for the implementation of Proclamation No.455/2005, the payment of compensation for rural landholding in the regional state is being effected in accordance with the Federal relevant laws.³⁷⁶ Therefore, the right to compensation for the termination of lifelong use right due to expropriation of rural landholdings for more useful public purposes is guaranteed under the existing legal framework. The fact that

³⁷² Regulation No.135/2007, Preamble

³⁷³ Proc No.455/2005, Art.2 (1)

³⁷⁴ Proc No.455/2005, Art.8 (1)

³⁷⁵ Id, Art.8(2)

³⁷⁶ Proclamation No.455/2005 and Regulation No.135/2007

the land is publicly owned and the FDRE Constitution provides for payment of compensation for termination of private property rights as a result of expropriation proceeding should not be construed as if compensation for expropriation of rural landholding is denied.

The cumulative reading of the relevant provisions of the Constitution and other subsidiary existing laws both at the federal and the regional levels should be read together so as to understand the full spirit of the law. In general, the right to compensation is not only provided for the protection of the owner but also the bare owner and usufructuary as well as any person who benefits by servitude on an immovable.³⁷⁷ Thus, the fact that land is owned by the state does not mean that its loss is not compensable. A general reading of Article 40 (8) of the FDRE Constitution, relevant provisions of the Federal Rural land Proclamation No.456/2005, Articles 7 and 8 of Proclamation No. 455/2005 and the implementing regulations as well as Art.6 (10, 11 and 12) of Oromia Rural Land Administration And Land Use Proclamation No.130/2007 elucidate that the following interests or rights can be compensated:

- A property situated on the land
- Permanent improvements to the land, and
- Termination of permanent or temporary loss of use right over the land.

4.3.2 Determination of Compensation

In the law of expropriation, after the right of compensation is recognized as a constitutional right, the method of fixing the amount of compensation, the time and the mode of payment are the next crucial issues to be addressed. In other words, mere recognition of right to compensation cannot bear fruits unless it is effectively applied in practice. Accordingly, the law is expected to lay down the mechanisms and methods that facilitate the enforcement of constitutional right to compensation when it recognizes the expropriation of private property. In other words, there should be sufficient enforcement mechanism in place with respect to expropriation and issue of adequate, effective and prompt compensation.

³⁷⁷ The Civil Code of Empire of Ethiopia, 1960, Neg.Gaz. 165, Art.1470

The coming part is devoted to seeing the techniques used to enforce the right of compensation (valuation methods, modes and amount of payment of compensation during expropriation of rural landholdings in the Oromia with specific reference to Dukem town and its surroundings).

4.3.2.1 Valuation System and Mandate to Value

The valuation process whereby compensation is fixed according to law is generally the most difficult, time consuming and litigated part of the expropriation process.³⁷⁸ There is no independent and developed valuation system as well as professionals in the field of land valuation in Ethiopia. The Federal Landholding Expropriation Proclamation provides that “The valuation of property situated on land to be expropriated shall be carried out by certified private or public institutions or individual consultants on the basis of valuation formula adopted at the national level.”³⁷⁹ Although the law assumes the existence of certified assessment professionals and a nationally adopted uniform formula for valuation, it is a difficult task to find professional experts and uniform valuation formula in practice. Provisionally, the Ministry of Federal Affairs has been authorized to develop the capacity of a valuation committee, in collaboration with appropriate federal and regional government organs, until valuation experts and a nationally adopted uniform formula for valuation of property come in to existence in the country.³⁸⁰ Thus, in the interim, valuation should be carried out by committees comprised of different experts of different backgrounds who have the relevant qualifications.³⁸¹ Although the Ministry of Federal Affairs has not yet given a clear direction in this regard, regions and federal government have adopted or are adopting their own valuation formulas. For instance, in Oromia Regional State, most urban and rural land administrations have already adopted implementing rules that contain mainly compensable interest and valuation formulas.³⁸² However, the method adopted by the woreda and urban administration in relation to land valuation and compensation are not similar.

³⁷⁸ Daniel W/Gabriel, Compensation during Expropriation, in Muradu Abdo Eds. Land Law and Policy in Ethiopia since 1991: Continuities and Changes, Ethiopian Business Law Series, Vol.III (2010), p.207

³⁷⁹ Proc No.455/2005, Art. 9(1)

³⁸⁰ Ibid, Art.9(2)

³⁸¹ Ibid

³⁸² In this regard, the Akaki Woreda and Dukem town administration have adopted their own compensation valuation formula. Generally it can be said that there are no significant difference between Federal and Regional land related legislations, since regions are expected to follow federal laws. This is because administration of land is basically entrusted to federal government, and regions are to administer the land according to federal laws. See Art.51 (5) Art.52 (2) (d) of the FDRE Constitution. Proc. 456/2005 allows regions to issue laws and regulations to administer land in accordance with federal laws.

The Federal Expropriation and Valuation of Compensation Proclamation provides that “Where the land to be expropriated is located in a rural area, the property situated thereon shall be valued by a committee of not more than five experts having the relevant qualification and to be designated by the *woreda* administration.”³⁸³ Similarly, in Oromia Regional State, the valuation of property is being carried out by a committee of people.³⁸⁴ To this end, the practice in *Akaki Woreda and Dukem municipality* shows that the compensation committee comprises five members constituting resident of the kebele who well knows the local situation, one expert (it could be surveyor, agronomist, civil engineer, and economist), agricultural expert, representative from bureau of land administration and kebele chairman.³⁸⁵ Witnesses of disinterested party may also be present during the valuation of the compensation.³⁸⁶ This shows that regional rural land administration authorities have been given a mandate to constitute members of the committee and to value the property. Similarly, the urban administration, municipality, is given the same power to designate members of a committee to value the property.³⁸⁷ Thus, the Ethiopian law in general and the practice in Oromia in particular adopted a valuation system of an administrative nature as opposed to a judicial one as practiced in other countries.

4.3.2.2 Basis of Compensation

Compensation paid for the termination of use right on the rural landholding is assessed for three major compensable interests. That is, a landholder whose holding has been expropriated must be entitled to payment of compensation for his property situated on the land and for permanent improvements he made to such land as well as for the termination of use rights itself.³⁸⁸ It is provided that the amount of compensation for property situated on the expropriated land must be determined on the basis of replacement cost of the property.³⁸⁹ Normally, the replacement cost method values the expropriated property by determining the replacement or reproduction cost of

³⁸³ Proc No.455/2005, Art.10 (1)

³⁸⁴ Interview with Ato Zaraay Surafel

³⁸⁵ Ibid

³⁸⁶ Ibid

³⁸⁷ Id, Art.10 (2), The exception is that if the property comprises public utility lines, then it is the owner of the property, say the Ethiopian Telecommunication Corporation, who is to estimate the value of the property (Art. 6 of Proc.455/2005).

³⁸⁸ Proc No.455/2005 Arts.7 (1) and 8 (1)

³⁸⁹ Id Art.7(2)

improvements and the market value of the land.³⁹⁰ Hence, this predominantly serves to value buildings as well as utilities, but not the land itself. It is considered as one of the better methods for determining a utility's fair market value.³⁹¹ Generally, it is assumed that landowners may be compensated fully by other approaches, especially where the property is not shown to be both unique in nature and location and also indispensable to the conduct of the landowners' business operations on the site from which a part is taken. Accordingly, buildings of a unique character are valued using this method. This approach can be used in countries where the market value of real property is not developed. The method develops the value in terms of current labour and materials required in assembling a similar asset of comparable utility.³⁹²

In addition, compensation for permanent improvement to land shall be equal to the value of capital and labour expended on the land.³⁹³ It is also stated that “*The cost of removal, transportation and erection shall be paid as compensation for a property that could be relocated and continue its service as before.*”³⁹⁴ Furthermore, the valuation formula for determining compensation for various properties and detail prescription applicable there has been provided under implementing regulation No.135/2007. In Oromia Regional State woreda and urban administrations have been adopted valuation formula for the assessment of the compensation for the expropriation of properties situated on the land on the basis of principles provided in the federal laws.

The third and the main category of compensable interest to be analysed under this part is displacement compensation which constitutes compensation for the termination of use right over rural landholding. As it is normally farming and/or grazing rural lands are taken from the users for the achievement of public purposes, the main objective of this part of the paper is to analyze the adequacy of the amount of compensation paid for farmers in the areas highly affected by intensive expropriation of landholdings in the Oromia regional state.

³⁹⁰ Daniel W/Gabriel, supra note, p.209

³⁹¹ Ibid

³⁹² C.E Ndjovu, Compulsory Purchase in Tanzania. (2003) Doctoral Thesis, Royal Institute of Technology. Stockholm, ISSN 1651-0216, p. 45

³⁹³ Proc No.455/2005, Art.7(2)

³⁹⁴ Id, Art.7(5)

4.4 Amount of Displacement Compensation in Rural and Peri-Urban Areas

Displacement Compensation refers to a compensation to be paid for permanent or temporary expropriation of use rights over landholdings itself. In rural and peri-urban areas of the country in general and Oromia regional state in particular, it is the most controversial issue specifically in relation to adequacy of the amount of compensation paid for the termination of use rights over the rural land. In this part, the kinds of compensations given in the event of the loss of a land holding and its adequacy will be discussed. The main questions to be addressed under this part include: How is the amount of compensation for expropriation of use rights over rural land valued? Is this amount adequate? How do farmers whose land already expropriated cope with their new mode of life? Which mode of compensation is better to reinstate the farmers successfully? Is there a clear guideline of law and practice to fix the amount and uniform basis of assessment of compensation? Can the farmers appeal against the administrative decisions on the mode and amount of compensation? etc.

4.4.1 Mode of payment

The existing relevant laws and practices show that displacement compensation may be given in terms of money, full or partial, or in terms of land-to-land compensation. Article 2(1) of Proclamation No.455/2005 defines “compensation” as payment to be made in cash or in kind or in both to a person for his property situated on his expropriated landholding. Thus, in what follows, the paper devotes to see the basis and amount of compensation payable in cash (monetary) and/or in kind (land to land compensation).

4.4.1.1 Compensation in Cash

Compensation in cash is recognized as the formal mode of payment of compensation in the laws and highly practiced in the Eastern Industry Zone. Monetary compensation is payable to termination of use rights ,in addition to the property situate on the land and permanent improvement made to the land, in two principal cases: for permanent and temporary termination of such right as will be appreciated in the coming section.

i.Monetary Compensation for Permanent Termination of Use Rights

In addition to the compensation to be paid to a landholder in respect of the property s/he owned on the land and the improvements s/he brought about on the land, a person who loses his/her holding rights on land perpetually because of the expropriation process is entitled to monetary compensation for his/her loss. In this respect the law provides that:

*A rural land holder whose land holding has been permanently expropriated shall, in addition to the compensation payable [for property and improvements made on the land] be paid displacement compensation which shall be equivalent to ten times the average annual income he secured during the five years preceding the expropriation of the land.*³⁹⁵

In Oromia regional state, particularly, in Finfinne Surrounding Special Zone, rural and peri-urban land has been massively expropriated for establishment of huge projects like industrial zone such as Eastern Industry Zone, Lega-Tafo-Lega-Dadi Industrial Zone, construction of public utilities like Adama-Addis Ababa High way Construction, Ethio-Djibouti railway construction, private investments, and so on. In such situation, peasants and semi-pastoralists inevitably lose their landholding and the use right over it. Pursuant to the Federal Expropriation and Compensation Proclamation No.455/2005 and the practice in the Oromia regional state, the amount of compensation is fixed at ten years annual income, based on the average annual income of the previous five years.³⁹⁶ The question here is that why the average annual income of the previous five years should be multiplied by only ten years? This method of fixing compensation has no reasonable justification and seems arbitrary.³⁹⁷ It does not conform to any of the established and widely accepted valuation methods and practices. Due to its lack of economic or legal background, this provision remains a source of discontent, complaint and frustration for most of the farmers who lose their holdings.³⁹⁸

³⁹⁵ Art.8(1) of Proc. 455/2005, Art.16 (3) of Regulation 137/2007

³⁹⁶ Proc No.455/2005, Art.8 (1)

³⁹⁷ Daniel, supra note, p.211, interview with Ato Jamal Gammada, socioeconomic expert in Akaki woreda Investment Bureau, 8 August, 2011

³⁹⁸ Interview with Ato Chala Bekele Dukem Municipality Land and Administration Office, August 8, 2011, Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And

As it has been discussed so far, the FDRE Constitution and Revised Constitution of Oromia of 2001 and other laws support the payment of commensurate or appropriate compensation. The Constitutional guarantee against eviction from rural landholding and the life time use right bestowed on peasants also support payment of adequate amount of compensation. Then, the question that may come to one's mind is whether or not this amount of compensation is really commensurate.

The main controversy surrounding this issue emanates from the following arguments and facts. First of all, this amount of compensation is said to be inadequate when compared with the duration of use rights that peasants and pastoralist have over their landholding. It has been seen that the rural land users have perpetual use rights over their holdings. This right is being guaranteed by holding certificates given to rural landholders in the country in general and the Oromia regional state in particular. In fact, peasants and pastoralists have the right to use the land holding for their life time and also have rights to transfer such right to their family members. They also harvest not only for only ten years but for their life time. The life expectancy in Ethiopia is also not limited to only 10 years but at least goes above 40 years in average. So, to be fair, any reasonable person may argue that the perpetual rights should not be less than half. "Using" means either cultivating the land himself or renting it to fellow farmers. Besides, after his/her death, the land devolves to his/her heirs or to other people s/he wishes to inherit, provided that s/he follows the law. Accordingly, land for a rural farmer is a strong base and an unwavering life security. Land is a life blood for the rural users as it provides the means by which he and his family, and perhaps generations to come, subsist.³⁹⁹ Therefore, this amount of compensation cannot be adequate in any circumstance when compared with the lost sustained by the land users.

It may be argued that the law should have provided for the calculation of compensation on the assumption that land is possessed for life and the benefit lost was life-long, the compensation should be based on the assumption of a life time income. If this is considered costly the government, why should not half of the average life expectancy of the rural land users is not considered? We know that land has been taken for achievement of more important public

Chair Person Of Land Valuation And Compensation Committee Of The Woreda, July 12, 2011, Interview with affected farmers.

³⁹⁹ See Daniel, *supra* note, p.216

purposes. But the question is “why should the peasants or pastoralists of certain area shoulder such burden at the expense of their life?”

Secondly, according to this provision, the calculation of compensation is measured on the basis of the average annual income over the past five years. It is again remained vague why the legislature opts for going back? It is also not clear whether or not the average annual income over the past five years will be calculated on the basis of the present market value or at least in favor of the interest of farmers. This very provision has been interpreted to mean different thing in different times. For instance, until 2007 G.C the calculation of compensation had been based on the average income gained from a plot of land per hectare and its average price in the past consecutive five years preceding the date of expropriation of the landholding.⁴⁰⁰ Accordingly, the compensation during this time was not valued on the basis of current market price. This practice has resulted in very low amount of compensation. It has been argued that “It is like forcing the farmer to sell his crops today and tomorrow at yesterday’s price;”⁴⁰¹ and maintained that the law should rather have considered the likely future increases in the inflation rate to calculate the present and future compensation to be paid. It has been criticized that the amount of compensation which has been paid during this time in the form of displacement compensation to farmers could not even buy enough food for ten years.⁴⁰² On the other hand, the money awarded as compensation could be recovered within fewer years, if the farmer is allowed to keep his land.

The 2010/2011 practice in Dukem town and its vicinity, however, shows that the five years’ average annual income is calculated on the basis of the present market price.⁴⁰³ Accordingly, the five years average annual income in this area has been interpreted to mean the annual produce of crops gained per hectare and not the price in which the produce has been sold in the past five

⁴⁰⁰ Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011, Interview with Ato Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person of Land Valuation and Compensation Committee of the Woreda, July 12, 2011

⁴⁰¹ Interview with Ato Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person of Land Valuation and Compensation Committee of the Woreda, July 12, 2011

⁴⁰² Ibid

⁴⁰³ Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011, Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person of Land Valuation and Compensation Committee of the Woreda, July 12, 2011

years. The reason is that it is an accepted fact now in Ethiopia that the price of goods is increasing from year to year and the amount of compensation which has been paid on the past market price cannot be adequate to reinstate the displaced farmers.⁴⁰⁴ For instance, if Teff has been produced on the rural land expropriated for the past consecutive five years, then it is the amount of Teff gained in quintal that will be calculated averagely and multiplied by present market price of Teff per quintal and then multiplied by 10. According to the concerned public officials, this has been opted for the reason that the value of goods before three to five years ago does not reflect the current market situations of today, let alone for the coming ten years.⁴⁰⁵

Thus, in the Eastern Industry Zone, the practice is that it is the average of the current fiscal year's current market price that is taken for the assessment of compensation. The data acquired from the public officials of the research site shows that the inadequacy of the amount of compensation paid to the displaced farmers is getting the attention of the government and the system of calculating compensation is improving from time to time.⁴⁰⁶ For instance, the unit price per meter square has been increasing and now the average compensation paid for displacement from peri-urban land in the current fiscal year (2010/2011 G.C) reached 16 Birr per meter square and 160, 000 Birr per hectare annually. Furthermore, starting from June, 2011, the amount of compensation to be paid to the farmers in the Oromia Finfinne Surrounding Special Zone Akaki woreda is decided to be 18 Birr Per meter square and 180,000 Birr per hectare, particularly, by the Ethiopian Railway Authority.⁴⁰⁷ It is also known that the compensation paid for expropriation of rural land in Akaki woreda has been increased from 9,000 Birr/ Hectare to 160, 0000 Birr/ Hectare.

It is worth noting that the government has been leasing such land for 70, 000 Birr up to 150, 0000 Birr/Hectare per year. Nonetheless, since land is leased for a long period of time, the government gets much amount of money from land lease. For instance, the Dukem Town Municipality has leased 15,000m² of land to the investor called "African Equipment Part Services" in 2004 for the period of 40 (forty) years for the amount of compensation to be

⁴⁰⁴ Ibid

⁴⁰⁵ Ibid

⁴⁰⁶ Ibid

⁴⁰⁷ Ibid

calculated 12 Birr per meter square which equates to 180,000 Birr per year.⁴⁰⁸ This amount rises to 7,200,000 (seven million and two hundred thousand) Birr in the 40 year time period. This is chunk amount of money when compared to the compensation paid to the displaced farmers.

Based on the formula of compensation enshrined in The Federal Expropriation and Compensation Laws, the Oromia woreda and urban administrations have been developed the following calculation formula.

$$\frac{5 \text{ years' annual income (quintal per hectare)} \times 10}{10,0000 \text{ m}^2 \text{ (1 hectare)}} = \text{Unit price per meter square}$$

For instance, in 2003 E.C, the five years' average produce per hectare is said to be 27.29 quintals of Teff;

Current market price is said to be 523.79 Birr/Quintal;

Thus, the amount of compensation per hectare of land has been as follows:

$$\frac{2729 \times 523.79 \times 10}{10,000} = 14.2942291 \text{ (Unit Price per Meter Square)}$$

$$\text{That is, } 27.29 \times 523.79 \times 10 = 142,942.291 \text{ (per hectare)}$$

The next question to be determined is whether this amount is practically adequate to restore farmers' life. The competent authorities interviewed on this question believe that this amount of compensation can be seen from two dimensions. Firstly, they argue that although such amount is not commensurate to the rights lost because of expropriation of landholding, the farmers may rehabilitate to their life with this amount of money if they use it wisely. For instance, it is argued that the displaced peasants as well as semi-pastoralists may successfully start other alternative business activity if they pool their money together. For instance, the peri-urban farmers whose landholdings have been expropriated may engage in trade or other agri-business activities, if they invest the monetary compensation in concert. Let's assume that 20 farmers have been lost their land which is equivalent to 20 hectares of land. On the basis of the current law, the average displacement compensation paid per hectare is 160,000 Birr in peri-urban areas. So if 20 farmers pool this amount together, they will have 3,200,000 Birr. And accordingly, these farmers may

⁴⁰⁸ File No.1191 ,Dukem municipality, Record Office

start medium size economic activity. In Rural Areas, the Average amount of compensation payable for rural land is said to be equal to 150, 000 Birr per hectares. And 20 farmers will have 3, 000, 000 Birr which may enable them to start new life on new business activities.

The competent authorities cite 5 farmers in the Akaki Woreda, whose landholdings expropriated in lieu of 160,000 Birr/Hectare in 2010. They received 1, 200, 000 Birr for 7.5 hectares (total) of land expropriated. They have started different small and medium businesses on agriculture (poultry, diary, beef farming, and commercial agriculture) and supply of construction materials in the Eastern Industry Zone found near Dukem town. It is believed that such an economic activity is promising to change the life of these farmers.

The competent government officials argued that the peasants resist efforts made to support them to start new life. The authorities asserted that if the farmers were willing to accept their advice, they are ready to help them. Nevertheless, most interviewed displaced peasants have disclosed that they have not been advised to invest in other successful economic activity that could generate incomes to their livelihood. It is contended that the public authorities do not come up with tangible advice which could be practicable.⁴⁰⁹ It is said that there is no concrete contribution of public officials in rehabilitating the displaced farmers in practice although they sometime used to talk on the issue.

The situation analysis of some farmers whose lives are affected because of taking of their land indicates the fact that there are many failures from the side of the government in giving fruitful rehabilitation support. For instance, the case of Ato Tolossa explains the worst situation where most farmers now exist. He is one of the farmers affected by the Eastern Industry Zone. He is 70 years old and his wife is 61. He has been administering 13 families. He has 4 sons and 3 daughters. He also administers four grand children who are all below 18 years old. He lost his landholding equivalent to 2 hectares because of eastern industrial zone three years ago. He has to say the following:

⁴⁰⁹ Confidential interviews with affected farmers, Gogecha kebele , June 6 2011

I was paid 120,000 Birr, as I had lost 1 m² for only 6 Birr. I spent some amount of money to celebrate the wedding of my two daughters. I spent the remaining amount for food and other daily basic needs. Now I have left with nothing while my family is displaced. My sons have been migrated to Addis Ababa and work on their labor while my daughters have dropped out from school and work as house maids.⁴¹⁰

By the same token, the farmer who is resident of Akaki Woreda in kebele called Dadacha, which is located in the vicinity of Dukem town, has expressed his discontent as follows:

“I lost my two hectares of land in 1996 for investment activity to be undertaken by private investors here. My land has been valued for only 90 cents per meter square and 9, 000 Birr per hectare at the time. The government has taken my landholding without paying me adequate amount of compensation. I used to harvest 18 quintals of Teff per hectare every year in average before my land was taken and 36 quintals on the two hectares of landholding expropriated. Based on the above price calculation, I have been paid only 18,000 Birr for total landholding I lost. This amount of money was very insignificant and I couldn't buy food for three years with this money. My family has been displaced and we are now leading a very devastating life.”⁴¹¹

The situation of the affected ex-farmers shows that the expropriation of the landholdings has caused food insecurity. The amount of money paid is insignificant and caused displacement of the family and forced them to lead a devastating life. The worst thing here is that expropriation is affecting the rural poor irrespective of sex and age since it causes displacement of families as a whole. In general, the amount of displacement compensation payable to peasants in Oromia regional state is found to be inadequate both in law and in practice.

ii. Monetary Compensation for Temporary Displacement

Rural land may sometimes be required temporarily and might be expropriated accordingly by the competent authorities. To mention few instances that may necessitate provisional expropriation

⁴¹⁰ Interview with Ato Tolasa Shumi , Farmer in Dadacha Kebele, August 16, 2011

⁴¹¹ Interview with Ato Shifarrow Dame, Farmer in Dadacha Kebele, August 16, 2011

of rural land holdings: land may be taken temporarily for workers camp or transporting quarries during road construction. In addition, a land close by a big project may be provisionally expropriated for the reason that the holder cannot use it for farming or for other range of purposes. The law provides for the amount of compensation to be calculated in the following manner.

*A rural landowner or holders of common land whose land holding has been provisionally expropriated shall, in addition to the compensation payable under article 7 of this proclamation, be paid until repossession of the land, compensation for lost income based on the average annual income secured during the five years preceding the expropriation of the land; provided, however, that such payment shall not exceed the amount of compensation payable under sub- article (1) of this article.*⁴¹²

The arguments as to the inadequacy of the amount of compensation are also raised in such situation. The difficulty that is facing in practice is that the agency which expropriates land temporarily may not give it back in the same condition as it was before. This problem is particularly prevalent in road construction companies since they tend to spoil and destroy the fertility and usability of the land by mixing asphalt and other toxic substances that they used during the construction works.⁴¹³ It is also disclosed that the Oromia and the Ethiopian Roads Authorities (ERA) sometimes leave piles of stones after they finished construction. Besides, it has also been complained that some project owners were reluctant to pay more compensation when the project works continued for more than two years.⁴¹⁴

The Ethiopian Roads Authority Re-establishment Proclamation No 80/1997 gives ERA the power to “use, free of charge, land and such other resources and quarry substances required for the purpose of construction and maintenance of highways and other required services; provided, however, that it shall pay compensation in accordance with the law of properties on the land it uses” (Art. 6.18). The right of expropriation given to ERA under its reestablishment

⁴¹² Proc.455/2005), Art.8(2)

⁴¹³ Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011, Interview with Ato Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person Of Land Valuation And Compensation Committee Of The Woreda, July 12, 2011

⁴¹⁴ Ibid

Proclamation and in previous proclamations is in essence similar with the provisions of the Civil Code because the road works conducted by ERA is in the public domain.

Both ERA and ORA have been exercising what they call *a traditional right of way* of adjacent land to roads it constructs which is 30 mts in extent.⁴¹⁵ This right of way seems to have been established in practice through specifications and not by any form of legislation which gave ERA and ORA, by law, to exercise such right. It seems that it is in recognition of this that Art. 6 (17) of Proclamation No. 80/1997 re-establishing ERA gives the power to ERA to “determine the extent of land required for its activities, in the adjacency as well as surrounding of highways, and the conditions of use of such land by others”. The practice to date is that ERA pays compensation to affected persons regarding land deemed to be a right of way. This is a correct position in light of the fact that the right of way claimed by ERA and ORA is *de facto* and not *de jure* and therefore cannot be legally enforceable.⁴¹⁶ However, once ERA establishes by law a right of way, this may be considered a public domain and it can enforce its rights by means of ordering a cessation of any activity that violates such rights or even order the destruction of any works done in such right of way (Art. 1459 C.C). Presently, the validity of the 1944 legislation is questionable. Legal counselors of the ERA and ORA, who were interviewed by the researcher, could not be sure of its validity. This is because since 1944, many laws which provided for different rules about land have been issued.⁴¹⁷

4.4.1.2 Compensation in Kind

As has been discussed so far, the relevant rural land legislation provides for the payment of compensation to be made either in cash or in kind or both. For instance, the current Oromia rural

⁴¹⁵ ERA is entitled to a right-of-way equaling 15 meters of land on each side of the national highway, as per a proclamation issued in 1944, although this is not shown in any of its modern day establishment legislations. The said Proclamation No. 66/1944 that provided for the classification of roads, said that starting from the center of the road, 15 meters on each side, the land shall be part of the road. A Proclamation to Provide for the Classification of Roads, Proclamation No. 66 of 1944, Negarit Gazeta, Year 3, No.10. In its definition for “Highways” Article 2 of the Proclamation says: “highways are roads leading to the principal cities of our empire, the shores, and ports, and shall maintain by the government. They shall have a total width of 30 meters, of which the central part shall be from 6 to 12 meter wide, with a footpath on either side, for pedestrians, from 1 to 2 meters wide.”

⁴¹⁶ Ethiopian Roads Authority, Resettlement Action Plan, Package ‘A’ Road Projects, Nekemt – Mekenajo, Final Report, MARCH 2003

⁴¹⁷ Starting from that period, we have for instance, the 1955 Revised Constitution, the 1960 Civil Code, the 1975 Urban and Rural Land Nationalization Proclamations, the 1995 FDRE Constitution and the present day rural land redistribution legislations, one repealing the other.

land legislation provides that “any individual or organ whose land holding is taken for public uses shall have the right to get compensation for his properties and benefits lost beforehand; as much as possible, gets equivalent land individually or in group.”⁴¹⁸ Thus, land-to-land compensation is boldly and as a matter of principle introduced for the first time in the present proclamation. This kind of compensation is popular among farmers. Moreover, the Federal Landholding Expropriation and Compensation Proclamation provides for the possibility of land to land compensation in the following manner:

*Where the woreda administration confirms that a substitute land which can be easily ploughed and generate comparable income is available for the land holder, the compensation to be paid under sub-article (1) and (2) of this article shall be only be equivalent to the average annual income secured during the five years preceding the expropriation of the land.*⁴¹⁹

Land-to-land compensation is effected when the *woreda* or *kebele* administration possesses extra land in the locality in practice. In rural areas, land to land compensation is believed to reinstate the displaced landholders in a better manner. Most farmers prefer land to land compensation as the farmers in the Oromia region have special attachment to their land. For a farmer, the land is beyond economic value; possession of land is a source of pride and dignity in the society.⁴²⁰ Furthermore, it is the only means and way of life farmers can understand and be confident of. Farmers do not prefer compensation in terms of money even in case of adequate compensation. Accordingly, for instance, 25 affected farmers around Eastern Industry Zone were interviewed among which 84% have favored land-to-land compensation. This is mainly connected with the general economic development of the country and with the ways of life of the peasants than the amount of compensation paid in practice. For farming is the only skill they know, most farmers do not want to change their profession since they are unfamiliar to urban life.⁴²¹ Challenges may also be created because of the lump payment of compensation to those who have lost their land while onetime payment made particularly only to the head of a family does not create a

⁴¹⁸ Proclamation No.130/2007, Article 6 (11)

⁴¹⁹ Proc. No.455/2005.Art.8

⁴²⁰ Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011

⁴²¹ Ibid

sustainable form of compensation for the reason that the sum is sometimes wasted by farmers of little experience in handling cash capital.

Besides, land to land compensation is favored not only by the farmers, but also by most implementing agencies so as to avoid the payment of monetary compensation.⁴²² This is true due to the fact that monetary compensation is to be made only for the property on the land and to the extent of one year's annual income in the case of land-to-land compensation. In contrast, the implementing agency has to pay 10 years income if no land is to be given as compensation. Accordingly, from the implementing agency's perspective, this system is preferable. Nevertheless, this system seems to operate at the expense of the society since it obliges the society to pay instead of the organ who benefited by taking the land.⁴²³ Such a practice undermines the possibility that the land that is given as land-to-land compensation could have been given to landless or unemployed youth in the area. The problem lies when the land is to be taken for private investments such as private farm lands although such situation might be compromised where the development works directly benefits the society such as schools, health centers, rural roads, and may be irrigation works.⁴²⁴ In addition, during land-to-land compensation, the new land to be given as compensation may not be equal in size, comparable in terms of fertility, access to roads and other facilities such as schools and clinics⁴²⁵ and accordingly, the expropriated farmer may not get comparable land in fertility, size and location. Even though the law tries to offer similar land *as much as possible* but little to do with regard to compensation in the event of marked differences, experience indicates that it has been difficult to make compensation in such manner.

The great challenge to effect compensation in the form of land-to-land is that there is no free land to be used for this purpose of land to land compensation in most part of the regional state. Accordingly, in practice, the payment of compensation is mostly made in cash. Although the law

⁴²² Interview With Ato Chala Bekele Dukem Municipality Land And Administration Office, August 8, 2011, Zaraay Surafel, Finfinne Surrounding Special Zone, Akaki Woreda Agricultural Office Agronomy Department Head And Chair Person Of Land Valuation And Compensation Committee Of The Woreda, July 12, 2011

⁴²³ Ibid

⁴²⁴ Ibid

⁴²⁵ Interview with Ato Mokonnin, Sometimes, the expropriated land might be an irrigable land which provides the holder three harvests a year, while the replacement property, depending on annual rain fall, may make harvest possible only once a year.

provides for payment of compensation in kind (i.e., replacement of substitutable land) as there is no sufficient vacant land, especially in the Finfinne Surrounding Special Zone of Oromia where the investment movement and termination of use right is highly recurrent, the practicability of compensation in land to land form is not feasible.⁴²⁶ Thus, there is no possibility of compensating the landholder in substitutable land in this area unless redistribution of land is made.

The practice in the peri-urban areas of the regional state shows that there has been both monetary and land to land compensation for farmers until 2009. In the mean time, displaced farmers have been given monetary compensation according to the Federal Expropriation and Compensation Proclamation and they were also entitled to 500 curie meter square of land from the urban administration to build their own residential house. In the mean time, each member of the displaced family whose age is 18 years and above has been given at least 200 curie meter square of land for same purpose. Nevertheless, since 2009, this practice has been banned and now in peri-urban areas only monetary compensation is being paid in the regional state. In general, the compensation paid for displacing farmers from the outskirts of towns (peri-urban areas) is effected on the basis of Replacement cost valuation system for property situate on the land such as buildings, permanent improvement made to the land and for temporary or permanent displacement.

4.4.2 Complaints and Appeals in Relation to Compensation

The 1960 Civil code of Ethiopia provides that the individual who did not accept the decision of the arbitration appraisal committee can appeal to court if he has grievance on the amount of compensation. In rural areas and in an urban center where an administrative organ to hear grievances related to urban landholding is not yet established, a complaint relating to the amount of compensation shall be submitted to the regular court having jurisdiction.⁴²⁷ Moreover, the Federal Expropriation and Compensation Proclamation No.455/2005 rules that “Where the holder of an expropriated urban landholding is dissatisfied with the amount of compensation, he may lodge his complaint to the administrative organ established by the urban administration to

⁴²⁶ Interview with Ato Jemal Gemmeda, expert of Akaki Woreda Investment Bureau, August 8, 2011.

⁴²⁷ Civil Code Art.1471(1)

hear grievances related to urban landholdings.⁴²⁸ This has been practiced in the Dukem and its vicinity. Accordingly, any landholder who is dissatisfied on the amount of compensation can bring his complaint to the administrative organ established by the Akaki Woreda Administration or Dukem town municipality.

However, the problem in this provision is that the right to appeal is limited only to the amount of compensation and other claims related to expropriation such as validity of procedures of expropriation and factors necessitate expropriation (public purpose and its application) are not provided to be appealable. Such Tribunal (Administrative Agency) is required to examine the complaint and give its decision within such short period as specified by directives issued by the region and communicate its decision to the parties in writing.⁴²⁹ The decision of administrative tribunal is not final and any party dissatisfied with its decision may appeal, as may be appropriate, to the regular appellate court or municipal appellate court within 30 days from the date of the decision and the decision of the court shall be final.⁴³⁰ Nevertheless, an appeal submitted in the aforementioned manner by any landholder served with an expropriation order may be admitted only if it is accompanied with a document that proves the handover of the land to the urban or woreda administration.⁴³¹ Accordingly, the law presupposes the handing over of the expropriated landholding in order, for one, to exercise the right to appeal against the administrative decision on the amount of compensation and the execution of an expropriation order may not be delayed due to a complaint regarding the amount of compensation.⁴³² However, the practice around the Eastern Industry Zone shows that most farmers are reluctant to appeal against the administrative tribunals although they may be dissatisfied with the decision of administrative agency on the amount of compensation. This seems to stem from lack of awareness and resources to lodge cases before court of laws for the decisions that might not be

⁴²⁸ Proc No.455/2005, Art.11 (2), In rural areas and in an urban center where an administrative organ to hear grievances related to urban landholding is not yet established, a complaint relating to the amount of compensation shall be submitted to the regular court having jurisdiction. See Id, Art.11 (1)

⁴²⁹ Id, Art.11 (3)

⁴³⁰ Id, Art. 11 (4). The period specified for submitting an appeal shall not include the time taken to provide the appellant with a copy of the decision.

⁴³¹ Id, Art. 11 (6)

⁴³² Id, Art. 11 (7)

reversed thereon.⁴³³ Interviews conducted with the affected farmers also confirm this opinion. Accordingly, the affected farmers have to say the following:

*The government has all the powers i.e. the court, the police, the prosecutor are all belonging to the government. We fear that there might be revenge from the authorities. We have no resource to appeal against the decision of the authorities. Even if we are able to do it there is no probability of winning the case. It is like struggling with a mountain to demolish it.*⁴³⁴

It is worth noting that the law favors the interest of the implementing agency over the farmers as it empowers the taking of landholding irrespective of complaints on the adequacy of the amount of compensation in this regard.⁴³⁵ The other issue to be considered here is that it does not seem logical as to why the law limits the right to appeal on expropriation only to the amount of compensation and particularly, it is not clear why the law disregards the possibility of appeal regarding the existence of public purpose in fact and its subsequent implementation.

From the perspectives of the farmer ,as to the author, as noted earlier on, the right to appeal against the administrative tribunal should be extended not only to the amount of compensation but also to the existence of genuine case of expropriation and expropriation procedures.

⁴³³ Interview with Ato Tamiru Amenu, a Civil Bench Judge at the Akaki Woreda, July 9, 2011

⁴³⁴ Confidential interview with some of the affected farmers ,Gogecha kebele, June 6, 2011

⁴³⁵ Proclamation 455/2005, Art.4 (1,2,3)

Conclusion and Recommendations

Conclusion

Land is lifeblood of peoples in agrarian countries like Ethiopia. It is not only the principal and sometimes the only means of generating income for livelihood, but also political, cultural, social as well as psychological asset for its users especially in the rural areas. Land tenure system is one of the factors that affect land's productivity and the extent of the user's rights. Currently, in Ethiopia land is owned by the state and private ownership is prohibited by the FDRE Constitution and other subsidiary laws. Despite the prohibition of the private ownership of land in the country, the constitution guarantees free access to rural land and rights against dispossession for peasants and pastoralists. The rural landholders are also given a lifetime use rights over their holdings and they would not be dispossessed from the same except in cases of expropriation for genuine purposes of achieving public interests subject to payment of compensation.

Both in the Federal and Oromia Constitutions, it is explicitly provided that the amount of compensation must be "commensurate" to the value of the private property taken by the way of expropriation. However, since land is excluded from the realm of private property in the country, the issue as to whether land is compensable interest in light of the FDRE Constitution and regional constitutions may be debatable. If this issue is settled in an affirmative manner (if land is regarded as compensable interest in light of the constitution), the other issue still remaining vague is whether or not the principle of compensation stated in the Constitution is applicable for the termination of use right. The constitution provides that the amount of compensation to be paid for the expropriation of private property situated on the land and permanent improvement made to the land must be "commensurate" to the value of such property.

As far as the first issue is concerned, it has been argued that although private ownership of land is prohibited, this does not entail that landholder has no claim or right over such land. Rather, landholders are guaranteed lifetime use rights over their landholdings and such right holders are also guaranteed (by the FDRE constitution and Supra-National Constitutions) that farmers and

pastoralists may not be dispossessed from their possession. Since every right is not an absolute, such right may be limited in case of expropriation subject to payment of compensation. Moreover, as can be discerned from the provisions of the Civil Code of Ethiopia, expropriation proceedings can be extended not only to ownership right but also to other claims that a person may have over buildings including usufruct, servitude and etc.

The cumulative reading of the FDRE Constitution that provides for guarantee against dispossession for peasants and pastoralists as well as provisions of subsidiary land legislations that provide for lifelong use rights of rural landholdings as well as the recent practice of distributing holding certificates for rural landholders in the regional states (including Oromia) indicate that landholders have rights to claim compensation in case of lawful dispossession of their use rights. Thus, the fact that land is publicly owned in Ethiopia cannot deprive its users from claiming compensation and other rights which they are granted by the law.

Secondly, regarding the controversy surrounding the amount of compensation and its adequacy, it can be concluded that the principle enshrined in constitution that provides for payment of “commensurate” amount of compensation in case of expropriation is not sufficiently upheld by the subsidiary rural land legislations. In other words, the pertinent federal as well as regional land laws do not indicate the amount of compensation to be commensurate to the rights lost. Rather, in the Federal Expropriation and Compensation Proclamation as well as its implementing Regulations, it has been provided that displacement compensation to be paid to the farmers/pastoralists displaced as a result of expropriation should not exceed the average income gained from the land for the past five years which must be multiplied by 10 future years. The issue here is that it does not give sense as to why calculation basis is provided to be five years back and why only ten years while the farmers and pastoralists have lifetime use rights over their landholding. The calculation formula provided in the law is baseless as it does not have either scientific or practical justification(s). Hence, this formula is criticized for not being a basis for fair, just or adequate amount of compensation to successfully reinstate the displaced peasants and/or pastoralists. The critique emanates from two dimensions. Firstly, when compared with the rights that peasants and pastoralists have on their landholding (lifetime use rights); the amount of compensation payable under the existing law is very insignificant. Secondly, in addition to the

inadequate amount of compensation due to low standard (basis) of computation, the displaced farmers have been facing serious difficulties to restore their life in a successful manner. Moreover, the competent authorities lack commitments to rehabilitate the displaced inexperienced and poor effectively. Accordingly, the amount of compensation being paid in Oromia Regional State is found to be inadequate when seen in light of the rights that land users are granted by law and in light of the works done by the expropriating agencies in reinstating the displaced effectively.

The case of land expropriation in peri-urban areas is also the other critical case which has caused great discontent among the affected farmers in Oromia. This is connected with exploitation of public purpose implementation in practice and illegal land sale as well as corruption caused in connection with it. It has been found that land is taken without sufficient expropriation procedures and there has been cases where the intended public purposes were not implemented in the time and manner agreed thereon as individuals who take land usually delay in constructing public purpose works or change the original purpose or sell the land to some other individuals in a better price after couples of years. Thus, it has been contended that public purpose has become a looming crisis where farmers were displaced from their life while the intended purposes did not come into existence.

The other problem is that it is unfair to catch all the profit by the municipality while it is a possibility to empower farmers to negotiate on the price in which land should be leased to the investors. In this manner, unfair compensation affects tenure security of rural landholding and discourages people from making additional investment. This is one of the situations which call for improvement of laws to fill the gap on urban land speculation particularly on expropriation of peri-urban landholdings.

Finally, the Oromia regional government has not enacted its land expropriation and compensation regulations. Lack of standardized valuation and compensation methods and procedures are causing different valuations by different land taking agencies, resulting in different compensation values for similar lands. Furthermore, regional agencies, mainly municipalities that are zoning large expanses of land for lease to housing and real estate

developers are facing cash flow problems. While they are evicting farmers from peri-urban areas and have to pay compensation immediately, they will be leasing the land and receive fees in the future. There is no bridging finance available as financing instruments such as municipal bonds are unknown in Ethiopia. This is leading to undervaluing peri-urban land and property to match the available fund which is unfair to those losing their lands and have to establish new livelihoods.

Recommendations

Based on the foregoing discussions and findings, the writer would like to recommend the following few points to be seriously considered by the concerned government organs.

1. Although the government has the prerogative to expropriate landholding rights of the farmers to pursue some public interests that cannot be implemented without limiting the rights of private landholders, this should not be enforced in a manner that undermines the life of citizens. The constitutional guarantee against eviction granted to rural poor should not be compromised under the guise of achieving public purposes. The existing laws and regulations should be amended in light of the FDRE constitution that provides for the payment of compensation in advance “commensurate” to the life time use rights given to the peasants and pastoralists.
2. The government should not take the landholding rights of farmers and pastoralists without genuine cause of public purposes and it should strictly follow up its implementation. Particularly, the rural land expropriated for the expansion of cities and towns should be put into effect without delay. The illegal sale of land, delay in planting public works, change of the original purpose for which land was taken and other related failures in the peri-urban areas should be seriously regulated. The land which is everything for the rural poor should not be taken for the public purposes which are not implemented. Besides, towns and cities should balance the private interests with that of the public before taking landholding from its users. The development that displaces citizens from their life should be considered as opposite to the concept of development. The government should particularly strive to balance the benefits that are gained by

constructing towns and cities at the expense of displacing millions of the rural poor from their landholding which is beyond economic asset to them. In this regard the law should clearly empower regular courts to determine the decision of the expropriating authorities regarding the existence of genuine case of public purposes for expropriation and on the proper implementation of the same.

3. The government should pay just amount of compensation to the landholders whose land have been expropriated. In particular, it must be born in the mind of the concerned government organs that the fact that land is public property should not be construed as if private land holders has nothing to claim over it. It should be noted that the FDRE Constitution, the supreme law of the land, provides for guarantee against eviction of rural landholdings from peasants and pastoralists and the government cannot expropriate their indefinite use rights without payment of compensation commensurate to the rights lost. Thus, the base of calculation of compensation which provides for average income of past five years and considered only for the coming ten years should be removed from the law. The rural farmers should be compensated the loss of their land on other scientific formula, such as by income capitalization method. It should be taken into account that the government has no genuine rights to exploit citizens by violating their constitutional right to commensurate compensation.
4. A negative aspect of rural land taking by federal and regional agencies is that households who are evicted are farmers who face difficulty in starting a new livelihood if they do not get another piece of land to farm because this is the only skill they have. Mechanisms are not in place to train them in new skills and provide them with social, financial and management advice in starting new livelihoods. Some evictees squander the compensation they receive not knowing what to do with it. The government should provide condominium houses for the evictee from the money they are given as compensation. This needs serious attention by both the federal and Oromia regional government.

5. Professional land valuers or property appraisers should be created in Ethiopia since their absence is contributing to the payment of unjust or inadequate amount of compensation.

6. Last, but not certainly least, it must be noted that the fear of unfair valuation of land and lengthy and inadequate amount of compensation for land taken under the powers of expropriation can create a high degree of tenure insecurity and anxiety among rural landholders. Addressing such fear in valuation and compensation laws and, more importantly in applying these laws in a fair and equitable manner is essential to enhance tenure security.

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List of Interviewees

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Interview with Ato Aman Muda, Oromia Bureau of Agriculture and Rural Development Head Department of Land Use and Administration, June 22, 2011.

Interview with Ato Chala Bekele, In Dukem Municipality Land Administration Office Vice Chairman And Cadetral Department Head, August 8, 2011

Interview with Ato Ismail Tola, Public Relation officer of Oromia Roads Authority, July 12, 2011

Interview with Ato Jemal Gemmeda, Expert of Akaki Woreda Investment Bureau, August 8, 2011.

Interview with Ato Tamiru Amanu, Civil Bench Judge at Akaki Woreda Court, August 8, 2011

Interview with Ato Zaraay Surafel, Agronomist at Rural Development Bureau of Akaki Woreda at Special Zone of Surrounding Finfine and Chairman of Compensation Valuation and Assessment Committee of Dukem Woreda, 25, 2011

Addis Ababa University school of LLM Thesis Research Questionnaire
Questions to Farmers

Name _____ Number of family _____ Address _____

Questions

1. How many hectares of land is expropriated? _____
 - 1.1. Type of land: farmland? Or pasture or compound (built up land)? Or all? _____
 - 1.2. Do you have any remaining land? _____
 - 1.3 For what purpose was the government expropriated your land? Investment _____
Urbanization _____ Road construction _____ Other _____ (mark x for your answer)
2. When did your land expropriated? _____
3. What was the average yearly production you get from the land per hectare? _____
4. Have you received compensation for that? _____
 - 4.1. What was the mode of compensation? Land, money? _____
 - 4.2. Which mode of compensation is better for you? _____
5. Have you been given a chance to make choice for the mode of compensation? _____
6. How much money did you receive as compensation per hectare of land? _____
7. How many years were considered for Calculation of compensation? _____
8. Do you believe that the amount of compensation was/is adequate to participate on other economic activity successfully? _____
9. Do you think that you have right of appeal against the decision of administrative tribunals on the amount and mode of compensation? _____
10. Have you satisfied with decision of the Administrative tribunals? If not, did you appeal? If not, Why? _____
11. On what alternative economic activity did/do you invest your money? _____ Is there any assistance or advice given to you from the government body on how to do business by the money paid to you as compensation for the land expropriated? _____
Can you mention it, if any? _____
12. Do you have you any prior experience on other economic activity than agriculture? _____
13. Who gets compensation: only head of the family or any other persons _____
14. For what is the compensation paid for: for land use right or for the property on the land? If the latter, how is property on land conceived by the authorities? _____
15. How do farmers whose land already expropriated cope with (adjust to) their new mode of life? Are there peasant protests (arising out of expropriation issue) even sporadic and at low scale? _____ If so, how do they articulate their causes and how do the authorities respond to such protests? _____

Questions to Concerned Government officials

Name _____ Government Organization _____ Position _____ Address _____

Questions

1. Has your organization expropriated rural land for public interest purposes? (What is your understanding of public purpose?) _____
2. What are the main reasons for rural land expropriation in the regional state? _____
3. Do laws and policies adopted in relation to compensation upon expropriation of rural lands in Ethiopia in general and Oromia regional state in particular, effectively provide procedures for expropriation and just compensation? (Do concerned officials know about the existing expropriation laws, regional and federal?) _____
4. Are Do farmers given adequate awareness about the purposes of expropriation? _____
5. Do you believe that farmers have legal rights to receive commensurate amount of compensation for expropriated land? _____
6. How the amount of compensation is valued? _____
7. What types of mode of compensation are available for the farmers? Land to land, money? ____ Is the mode of compensation alternative or mandatory? _____ Which mode of compensation is better to reinstate the farmers successfully? _____
8. Is there a clear & uniform guideline of law on how to fix the amount of compensation? _
9. What are the factors to be considered in relation to valuation of the amount of compensation? _
10. How much money is being paid to the farmers for the land expropriated per hectare? _____
11. Do you think the amount of compensation is adequate to successfully enable the farmers lead their life? _____
12. Can the farmers appeal against the administrative decisions on the mode and amount of compensation? _____
13. Do you think the farmers are in a position to utilize the money paid to them on other viable economic activities such as trade properly? _____
 - 13.1. What challenges do you think prevent the farmers from using the money paid on viable economic activities? _____
 - 13.2. What experiences do you cite in this regard? _____
14. Is there any support that your organization provides to enable the farmers successfully engage in other viable economic activities? _____ Can you mention it, if any? _____
15. Is there specific time of payment of compensation? Before or after dispossession? _____
16. Is there strict follow up whether the expropriated land is used for the intended purposes on time? _

**UNDER OROMIA REGIONAL GOV'T LAND
LEASE CONTRACTUAL AGREEMENT
MADE**

BETWEEN

“DUKEM TOWN ADMINISTRATION” AND “ _____ ”

**UNKA – 001 – Liizii
MOOTUMMAA NAANNOO OROMIYAATTI
Komishinii Invastimntii OromiyaaWALIIGALTEE
Liizii LAFAA**

Gidduti Taasifame

“BULCHIINSA MAGAALAA DUUKAM” FI “ _____ ”

❖ _____
Address: _____
P.O.Box: _____
Telephone: _____
Fax: _____
Hereafter referred as Lessor, and

➤ “ _____ ”.

Address: _____
Tel. _____
Fax. _____
P.O.Box: _____
E-mail: _____

Hereafter referred to as the Lessee.

PREAMBLE

The following preamble shall consider as the integral part of this agreement:

WHEREAS, the LESSEE is willing to take the land on rent for the project of “ _____ ” in **Oromia Region, Dukem town Administration, Kebele _____**.

WHEREAS, the Lessor is willing to rent the land for the above-mentioned purpose to the Lessee,

NOW, THEREFORE, the two parties have agreed as follows:-

❖ _____
Teessoo: _____
Lakk. sanduqa: _____
Bilbila : _____
Faaksii: _____

Ammaan booda “Kireessaa” jedhamee kan waamamuu fi

➤ “ _____ ”.

Teesson,
Bilbiilaa.
Fax.
Lakk. sanduqa:
E-mail:

ammaan booda “Kireeffataa” jedhamee kan waamamu jidduutti waliigaltee godhamee dha.

SEENSA

Seensi kun akka qaama waliigaltee kanaatti lakkaa'ama.

Kireeffataan lafa **Bulchiinsa Magaalaa Duukam Ganda _____** keessatti argamu pirojaktii “ _____ ” tiif kireeffachuu waan barbaadeef,

Kireessan laficha projectii armaan olitti caqsameef akka oolu waan heyyammef.

Haaluma Kanaan, Qaamolee lamaan akaata itti aanutii waliigalaniiru:-

ARTICLE 1
Meanings and Definitions

1. “**LESSOR**” means “Dukam Town Administration”
and “**LESSEE**” means “_____”.
- 2- “**Project**” means the project to be developed by the Lessee on the land rented out
3. “**Agreement**” means the agreement signed between the two parties.
4. “**Transfer its use rights**” means the right the Lessee has to transfer the land leased out to any third party who has the capacity to develop the land & who is going to implement a better project than the previous Lessee, with the prior written consent it gets from the **LESSOR**.
5. “**Losses and damages**” means the loss or damage incurred When the LESSOR or the lessee does not fulfill its obligation.
6. “**Illegal act**” means to perform anything which is prohibited by the laws of the country.
7. “**Special skill**” means a profession which requires continuous courses or education.
8. “**Lease**” means a system which grants use right for the lessee depending up on the nature & stay of the project and the system of land administration.
9. “**Altering name of the project**” means a change of name of the project only and it has no relation with alteration of the project & transfer of Land holding right.
10. “**Change of project**” means a change of project type which is different from the previous one.
11. “**Correctional actions**” means an action taken by the lesser before termination of the contract in the form of final notice.
12. “**Handing over the land**” for the purpose of this contract, for agriculture projects beginning from the date of the handing over of the land holding certificate and for industrial projects other buildings the date by which the handing over of constriction permit executed shall be taken as handing over of the land.
13. “**Crimes related with Investment**” means crimes which are associated with investment and incorporated in the criminal code of the country.

Keewwata 1
Hiikaa fi Ibsa

1. “**Kireessaa**” jechuun Bulchiinsa Magaalaa Duukam yoo ta’u “**kireeffatan**” jechuun “_____” jechuudha..
2. “**Pirojektii**” jechuun Pirojekti kireeffataan lafa kireeffaterratti hojjetu dha
3. “**Waliigaltee**” jechuun waliigaltee qaamolee lamaan jidduutti mallattaa’e dha.
4. “**Mirga ittiffadamaa dabarsuu**” jechuun mirga Kireeffataan Kireessaarraa duraan dursee heyyama barreeffamaan argatuun adeemsi qaama sadaffaatiif kan itti dabarsuu dha.
5. “**Badii fi Miidhaa**” jechuun badii yookiin miidhaa sababi kireessaan yookiin kireeffataan ittigaafatummaa isaa/ishii bahuu dhabuutiin mudate jechuudha
6. “**Adeemsa (gocha) seeraan alaa**” jechuun dhimmoota seera biyyattii kamiinuu dhoorgaa ta’an raawaachuu jechuudha”
7. “**Dandeettii addaa**” jechuun ogummaa barnootaan yookiin leenjiiidhaan argame kan piroojaktii heyyamameef barbaachisu jechuudha.
8. “**Liiziin (kiraa)**” jechuun sirna lafti akkaataa turtii bara waliigaltee, amala piroojaktii fi sirna bulchiinsa lafaatiin yeroo murtaa’e keessatti mirgi itti fayyadamaa qofti itti fayyadamtootaaf ittiin dabru jechuudha.
9. “**Jijjiirraa maqaa piroojaktii**” jechuun bifa (akaakuu) piroojaktii jijjiiruun osoo hin barbaachisin yookiin mirgi itti fayyadamaa qaama biraatti osoo hin dabrin maqaa piroojaktichaa qofa jijjiiruu jechuudha.
10. “**Jijjiirraa gosa piroojaktii**” jechuun akkaakuu piroojaktii biraatti jijjiiruu yookin kan biraatiin bakka buusuu jechuudha.
11. “**Tarkaanfii Sirreeffamaa**” jechuun waliigalteen osoo hin diigamin dura yeroo murtaa’e keessatti akka sirreessu (kireeffataaf) of’eeggannoo kennamuuf jechuudha.
12. “**Lafa harkaan gahuu**” jechuun lafa qonna adda addaatiif oolu yoo ta’e guyyaa kaartaan itti kenname;lafa ijaarsa adda addaa yoo ta’e guyyaa heyyamni ijaarsaa itti kenname jechuudha.
13. “**Yakka investimantii wajjin walqabate**” jechuun yakka misooma wajjin walqabate kan seera yakkaa keessatti tarreeffame keessaa kamiyyuu jechuudha.

Article 2

Location of the Leased Out Land

1. The leased out land is located in **Oromia Region, Oromia Special Zone, Surrounding Finfine Dukem Town; Kebele** _____.
2. The land leased to the Lessee in the area indicated herein above in sub-article 1 of this article shall include all the natural resources on it.
3. Notwithstanding the provision sub-Art (2) of this Article the Lessee shall protect all the natural resources on the land & it shall acquire permission before utilization.

Article 3

Total Area of the Land

The total area of the land leased to the Lessee is _____ m²(_____)

ARTICLE 4

DURATION OF THE AGREEMENT

1. This Land lease contractual agreement shall remain effective for a period of **60(Sixty)** years. Thus, it begins from. _____ E.C to _____ E.C.
2. With the prior consent of the two parties, this agreement may be renewed.
3. The Lessee shall give the LESSOR a written notice Two years prior to the expiry date of this agreement expressing its desire to renew the agreement

Article 5

The Kind of Project carried on the Land Rented

1. The land leased to the lessee shall be used for the project of “_____”
2. The project expressed under Sub Art 1 above, Shall only be changed with prior written consent of the Lessor.
3. The Lessee has the right to ask for the change of investment project but the new project shall excel from the previous one or equal in any aspects and the application will be prepared in a written form.

Keewwata 2

Iddoo Laftichi Kireeffame Itti Argamu

1. Lafti Kireeffataan kireeffate kun **Bulchiinsa Godina Addaa Oromiyaa Naannawaa Fnnfinnee Magaalaa Duukam Ganda** _____ keessatti argama.
2. Lafti Kireeffataaf kireefame kan keewwata kana keewwata xiqqaa 1 jalatti ibsame kun qabeenya uumamaa isarratti argamu hunda nidabalata.
3. Kireeffataan qabeenya uumamaa laficharratti argamu eeguufi kunuunsuun alatti osoo heyyama kireessaa hin argatin itti fayyadamuu hin danda’u.

Keewwata 3

Bal’inna Laficha

Bal’inni lafa Kirefataan kireeffate kanaa m² _____ (_____) dha.

Keewwata 4

Turtii Waliigatichaa

1. Waliigalteen liizii lafaa kun waggaa **60 (Jaatamaaf)** kan turu yoo ta’u guyyaa _____ irraa eegalee hanga _____ kan turu ta’a .
2. Waligalteen Kun fedhii qaamolee waligaltee kanaa irratti hundaa’ee haroomsifamuu ni danda’a.
3. Kireeffatichi waliigalticha haaromsuu kan barbaadu yoo ta’e, osoo barri waliigaltee kanaa hinxumuramniin dura waggaa lamaan dursee kireessaaf fedhii isaa barreeffamaan beeksisuu qaba.

Keewwata 5

Akkakuu Pirojektii Lafti Kireeffameef

1. Lafti kireeffame kun pirojektii “_____” tiif ni oola,
2. Pirojektii Keewwata xiiqaa 1 armaan olii jalatti caqasame kun kan jijiramuu Kireessaan barreeffamaan yammuu heyyameef qofa dha.
3. Kireeffatiichi mirga jijjirraa akaakuu pirojektii gaafachuu kan danda’uu barreeffamaan ta’ee garuu piroojaktiin gafaatamu kan duraanti caalaa kan fooyya’e yookiin kan duraaniitiin kan wal madaalu ta’uunisaa yoo itti amaname qofa kan heyyamamu ta’a.

ARTICLE 6

Land lease Price and Terms of Payment

1. The land Lease payment per M² per year is _____(____) **Birr**, accordingly for the land indicated the lessee shall pay _____(____) **birr** per year for the total land holding, and the total rent payment for **40 (Forty)** years shall be _____(____-) **Birr** only.
2. Notwithstanding the provision of sub article one of this article, the lessee shall pay **10% down payment** which is _____ **and the first year annual payment birr** _____ (_____) **and totally** _____ (_____) from the total imbursement immediately before signing of this contract. The remaining balance shall be paid annually starting from _____
3. When the lessee failed to pay his annual land lease payment consecutively for two years, the payment shall be effected in accordance with proclamation No. 99/2005 and tax proclamation No. 74/2003.

Article 7

Rights of the Lessor

1. Make a follow up works to verify Whether the lessee uses the land leased out in accordance with the conditions stated in this agreement and under the project proposal permitted , without making any hindrance on the day-to-day activities of the Lessee and to take appropriate measure if any fault occurs:
2. Take back the rented out land in accordance with pertinent investment laws without any precondition if the Lessee failed to develop the land within the given six months.
3. Give notice to the lessee, which expires within one month if the lessee after commencement of the project stops working or after finishing the main construction of the project if the Lessee rent the project before production or if the lessee implements other project which is not indicated in this agreement.
4. To terminate the contract with out any pre-condition if the lessee failed to correct in accordance with the notice and commits a crime which is related with Investment.
5. After investigating preconditions relating to the requests presented by the lessee on the change of name of the project, change of type of project & transfer of land holding right, to give permission.
6. Request the Lessee to submit a report regarding the project and if the Lessee failed; to this obligation following one final notice to present the case before Oromia Investment Board for decision.

Keewwata 6

Haala Kaffaltii Liiziifi YerooItti Kaffalamu

1. Kireeffataan lafa kireeffate kanaaf waggaatti kaareemeetira tokkoof qarshii ___(____) lafa waliigaltiif waggaatti qarshii _____ (_____) kan kafalu yoo ta'u walumaagalatti kanfaltii isaa waggaa **40 (Afurtama)** keessatti kanfalee kan xumuru qarshii _____ (_____) ni kafalaa.
2. Kan keewwata kana keewwata xiqqaa 1 jalatti tumame akkuma jirutti ta'e, kirreeffataan kafaltii waliigalaa keessaa, kafalti dura %10 Qarshii _____ fi kafaltii bara jalqabaa Qashii _____ (_____) walumagalatti Qarshii _____ (_____) ni kafala. Kafaltii hafe, _____ irra kasse waggaa waggaatti kan raawwatamu ta'a.
3. Kireeffataan akkaataa armaan olii kanaan osoo hin kafalin waggaa lamaaf walitti aansee kan ture yoo ta'e kafaltiin isaa Labsii Lakk.99/1997 fi labsii gibiraa lakk. 74/1995 tiin kan raawwatamu ta'a.

Keewwata 7

Mirga Kireessaa

1. Kireeffataan akkaataa waliigaltee seenettiifi akkaataa piroojaktii heyyamameefin diraqama isaa kabajee raawwachaa jiraachuu isaa osoo hojii isaa hin dhaabsisin hordofuu fi yoo dogoggorri jiraate tarkaanfii sirreeffamaa fudhachuu;
2. Kireeffatichi guyyaa laficha harkaan gahate irraa kaasee ji'a jaha keessatti piroojaktii heyyameef yoo hin jaqabin waliigaltee diiguudhaan laficha deebisee fudhachuu.
3. kireeffatichi piroojaktii heyyamameef erga jalqabee booda jidduutti yoo dhaabe yookiin ijaarsa erga xumuree booda omisha (tajaajiila kennuu) yoo hin jalqabin yookin nama biraatiif yoo kireesse yookin piroojaktii heyyamameefin ala itti fayyadamee yoo argame akka sirreessu of'eeggannoo ji'a tokko qofaaf turu al tokko qofa kennuu
4. Of'eeggannoo kenname kanaan sirraa'uu yoo baate, ykn Kirreeffataan gocha seeraan alaa yoo raawwate yookin yakka investimantii wajjin walqabate raawwatee yoo argame of'eeggannoo tokko malee waliigaltee diiguu,
5. Jijjiirraa maqaa, gosa piroojaktiifi mirga abbummaa qabiyyee kireeffataadhaan dhiyaatu erga xinxalee booda yoo itti amane heyyamuu,
6. Gabaasni kireeffataarraa barbaadu kamiyyuu yeroodhaan akka dhiyaatuf gaafachuu, yoo hin dhiyaatin of'eeggaannoo isa dhumaa al tokko erga barreessefii booda Boordiitti dhiyeessee murtii itti kennisiisuu,.

ARTICLE 8

OBLIGATIONS OF THE LESSOR

Without prejudice to the existing provisions of the federal and regional Investment and other relevant laws, the Lessor shall have the following obligation:

1. After the agreement is signed by both parties, to write a letter for the responsible government body & to follow-up the handing over process.
2. Warrant to the Lessee that the Lessee has the right to peacefully and quietly use the land leased and protect the lessee from any third party claims over the landholding through taking legal actions or litigating.
3. Assist the Lessee to acquire land holding certificate through facilitating the process.
4. Strictly comply with all obligations contained in this agreement and respect Lessee's right stipulated in the civil code and other in accordance with the relevant laws.
5. To give a written permission for the requests of the Lessee concerning change of project type, alteration of project name and transfer of ownership right if the Lessee fulfilled all the requirements stipulated under the Laws of the region, and to notify responsible government organs by signing agreements of alteration or transfer of holding,
6. To give grace period if the existence of "Force majeure" is confirmed or verified by the Lessee.

DIRQAMA KIREESSAA

Seerotaa Invastimentii federaalaa fi naannichaa akkasumas seerota biroo kan dhimma kana wajjin miilto qaban akkuma eegamanitti ta'anii kireessaan dirqamoota armaan gaditti ibsaman niqabaata:

1. Waliigalteen erga mallatteeffameen booda lafti dafee kireeffataa harka akka gahu qaama dhimmi ilaaluf xalayaa barreessufi harka isaa gahuu isaa hordofuu
2. Kireeffataan lafa kireeffamerratti tasgabbiidhaan jeequmsa tokko malee akka itti fayyadamu gargaarsi akka godhamuuf qaama dhimmi ilaalutti beeksisuu mormii lafa kireeffame ilaalchisee qaama 3^{ffaa} dhaan yoo ka'e abbummaadhaan **falmee mirga kireeffataa kabajsiisuu,**
3. Kireeffataan lafa kireeffate mirga itti fayyadamuu akka qabaatu kaartaan akka kennamuuf taasisuu,
4. Dirqamoota waliigaltee kana keessatti ibsaman hundaa fi mirga kireeffatichaa seera hariiroo hawaasaa fi seerota biroo kan raawwatiinsa qaban keessatti tarreeffaman kabjuufi kabajsiisuu,
5. Gaafii jijjiirraa gosa pirojaktii, maqaa piroojaktiifi dabarsa mirga ittifayyadama lafaa ilaalchisee akkaataa seerotaafi qajeelfamaatiin ulaagaalee barbaachisan guutanii kan argaman yoo ta'e heyyamuufi waliigaltee jijjiirraa yookin dabarsaa mallatteessuudhaan qaama dhimmi ilaalu beeksisuu.
6. Haalli humnaa ol ta'e mudachuu isaa yoo mirkaneesse yeroo dabalataa (Grace Period) kennuu,

KEEWWATA 8

Article 9

Rights of the Lessee

The Lessee has the right to:

1. Use the land leased for the purpose of the project permitted;
2. Transfer the use right of the land leased to any other third party who has the capacity to develop the land after having written consent from the Lessor,
3. Construct and utilize all types of infrastructures with the prior approval of the concerned governmental organs.
4. To use the land, depending on the permission of the LESSOR on the change of project name or type with in the time duration stated in the contract.
5. If the LESSOR interrupts the Lessee and causes any damage or any other kind of loss, the Lessee has the right to claim compensation for the damages and losses incurred,
6. If it's permitted by the LESSOR to work jointly with other organs.

Article 10

Obligations of the Lessee

In addition to obligations found in relevant investment laws, the Lessee shall:

1. Commence its project activities on the land leased out within six months starting from the date of handover of the land leased out and finish the project with in two years.
2. Submit a report about the progress of its project to the LESSOR every three months throughout the duration of the agreement without interruption.

Keewata 9

Mirga Kireefataa

Mirga kireeffatichi qabu:-

1. Lafa kireeffate tajaajila pirojektii heeyyamameef oolchuu,
2. Kireessaarraa heyyama barreeffamaan erga argatee booda mirga itti fayyadama lafa kireeffatee nama dandeetti misoomsuu qabutti dabrsuu,
3. Heyyamni qaama mootummaa dhimmi ilaalurraa yoo kennameef bu'uura misoomaa barbaachisaa ta'e diriirsuu fi itti fayyadamuu,
4. Kireessaan seerotaafi ulaagaalee guutamuu qaban irrati hundaa'ee gaafii dhiyaate xiinxaluudhaan erga heyyameefii booda maqaa yookin gosa piroojaktii isaa jijjiiree yeroo kaa'ameef keessatti hojjachuu..
5. Kireessaan seeraan ala dhimmaa kamiifuu jecha hojii akka hin hojjanne isa dhaabsiisuu isarraa kan ka'e kisaaraan yoo irra gahe beenyaa gaafachuu.
6. Kireessaa heyyamsiisuudhaan nama biraa wajjin qindaa'ee hojjachuu,

Keewwata 10

Dirqama Kireeffataa

Dirqamoota seerota investimantii kan raawwatiinsa qaban keessatti tarreeffaman dabalatee kireeffataan;

1. Guyyaa walharkaa fuudhiinsi lafaa raawwate irraa eegalee ji'a jaha keessatti hojii qabatamaa pirojaktichaa jalqabuu fi woggaa lama keessatti fixuu qaba.
2. Waa'ee misooma projaktii isaa ji'a sadii sadiin turtii waliigaltichaa keessatti osoo walirraa hin kutin gabaasa Kireessaaf dhiheessuu;

3. Open office at the nearest town or at the site of the project & assign his /her representative and make him/her appear when required.
4. Use proper & modern machineries & equipment, in order to supply a type of production which is competitive in the world market or to give service in the level of global standards using recent technologies.
5. Develop the Leased out land in accordance with the purposes mentioned in this agreement. In addition, to commence and finish the project with in the period indicated in the agreement;
6. Notify the Lessor immediately, if any claim or conflict arises by third party on its use right on the land rented out and when there is any problem which is out of the control of the Lessee,
7. Give job opportunities to the people residing in the investment area unless it requires special professional skills;
8. Submit lists of permanent workers to the LESSOR
9. Allow experts of the LESSOR sent for appraisal and follow up of the use of the land rented in accordance with this agreement and relevant investment laws and shall give them the required information.
10. Respect all other conditions stated in this agreement and relevant laws of the country.
11. Notify the LESSOR, whenever there is a change of address.

3. Waajjira Magaalaa dhiyoo yookiin iddoo piroojaktiitti banuudhaan bakka bu'aa isaa/ishii beeksisuu fi yeroo barbaadamu akka argamu taasisuu;
4. Meeshaa ammayyaa teknolajii jiru waliin walgitu guuttachuudhaan oomisha fooyya'aa gabaarratti dorgomaa ta'e oomishuu yookin tajaajilaa teeknolajii ammayyaatiin deegarame kennu ;
5. Laficha piroojaktii heyyamameef qofa oolchuufi yeroo waliigaltee keessatti ibsame keessatti hojii isaa jalqabuufi xumuruu
6. Dhimmi humnaa olii yoo isa qunname yeroo dabalatan argachuuf, jeequmsi ykn gaaffiin mirga itti fayyadama lafaa qaama 3^{ffaan} yoo ka'e battalumatti kireessaaf beeksisuu;
7. Ogummaa barnootaa piroojaktichi barbaadu kan gaafatu yoo ta'e malee carraa hojii namoota naannoo investimantichaa jiraataniif kennuu;
8. Maqaa hojjattoota dhaabbiin qacaramanii kireessaaf dhiheessuu;
9. Ogeessota kireessaa kan hordoffiifi too'annoof ergaman simatee keessumeessuu, odeeffannoo barbaachisus kennuu,
10. Dhimmoota waliigaltee kana keessatti ibsamaniifi seerota biyyattii kan dhimma kana ilaalan kabajuu
11. Teessoo isaa yoo jijjiiree battalumatti kireeffataa beeksisuu.

ARTICLE 11

Environmental Protections

1. The Lessee shall protect the environment from any type of disasters through applying modern technologies.
2. It's strictly prohibited to use chemicals and anti-pests which are prohibited by law or which could devastate the environment.
3. Cover 2% of the land rented out with indigenous trees excluding eucalyptus.

ARTICLE 12

Penalty

1. The Lessee shall pay birr 10,000(ten thousand) penalty without any precondition in the attempt to employ unskilled laborers from other regions and correct his/her performance in accordance with the provision stated under Article 10(7) of this agreement.
2. The Lessee shall pay penalty, Birr 50,000(fifty thousand) for using legally prohibited chemicals and anti-pests or if pollute the environment by releasing hazards substances & make correct the acts.
3. If the Lessee refuses to submit report on the project and about the employees, or about changes relating to budget and employment salary the Lessee shall pay 5,000(five thousand) Birr penalty and make correct the wrong acts.

Article 13

Annex to the Agreement

The document listed below shall be annexed and considered the part and parcel of this agreement,

1. The Decision Letter of the land rented out
2. Photocopy of the ID or passport of the sole-proprietor.
3. Investment License
4. Memorandum of Association
5. Article of Association
6. Land use plan
7. Action plan

Article 14

Liabilities

Each party shall be liable to one another for any damages that may arise due to non - performance of its respective obligations indicated in this agreement. Such liabilities shall include non-performance of this contract.

Keewwata 11

Eegumsa naannoo

1. Kireeffataan tooftaa sirrii ta'eefi teeknooloojiiidhaan deegarametti fayyadamuudhaan faalama naannoo maqsuu qaba.
2. Keemikaalotaafi qoricha seeraan dhoorgametti faayyadamuurraa of qusachuu qaba.
3. Lafa kireeffate keessaa %2 Baargamoon ala muka biyya keessatin uffisuu;

Keewwata 12

Adabbii

1. Kireeffataan hojjattoota human naannoo biraa irraa fidee hojjachiisaa jiraachuun isaa yoo irra gahame haalduree tokko malee adabbii qarshii 10, 000 kafalee raawwii isaa akkaataa keewwata 10(7) tiin ni sirreessa,
2. Keemikaalotaafi qoricha seeraan dhoorgametti fayyadamuudhaan yookiin xurii naannotti gadhiisudhaan yoo faale adabbii qarshii 50,000 kafalee adeemsa isaa kan sirreeffatu ta'a.
3. Kireeffataan gabaasa isaa yoo walirraa kute yookiin liistii hojjattootaa, jijjiirama gama baay'inaa mindaa hojjattootaatiin jiru yoo erguu baate adabbii qarshii 5,000 kafalee dogoggora isaa kan sirreessu ta'a.

Keewwata 13

Miltoowaan waliigaltee kana

Waliin deemtuuwwan armaan gaditti tarreeffaman kun akka qaama waliigaltee kanaatti lakkaa'amu

1. Xalayaa Murtii Lafa Kireeffmee
2. Garagalcha (waraabbii) waraqa eenyumaa abbaan qabeenyicha.
3. Heyyama Invastimantii;
4. Barreeffama Hundeeffamaa
5. Dambii Ittiin Bulmaataa
6. Karoora ittifayyadama lafaa
7. Karoora hojii

Keewwata 14

Itti Gaafatamummaa

Dirqama waliigaltee kana keessatti ibsame bahuu dhabbuudhaan qamilee lamaan keessaa kamiyyuu kan midhaan irra gahe yoo ta'e qamni miidhaa geessise badii qaqqabeef itti gafatamummaa nifudhaata. Itti gaafatamummaan kun raawwachu dhabiinsa waliigaltee kanaas ni dabalata.

ARTICLE 15
FORCE MAJEURE

1. Neither party shall be deemed in default of its contractual obligations where performance thereof is prevented by force majeure.
2. The term ‘force majeure’ shall be construed in accordance with articles 1792 and 1793 of the 1960 Ethiopian Civil Code.

ARTICLE 16
Settlement of Disputes

Any disputes or differences between the Lessor and the Lessee in breach of any condition stated in this agreement, which cannot be amicably settled between the two parties, shall be referred to the *regional Investment Board*.

ARTICLE 17
Conditions to terminate the contract

1. When the Lessee use the land for other purpose or for the purpose which is not allowed in this agreement; or,
2. When the Lessee failed to implement the permitted project with in the specified period or,
3. If work permit or Business license of the Lessee, canceled by the responsible government body following legal procedures; or,
4. If the Lessee distract natural property of the area or commits any action in opposition to the environment or,
5. When the Lessee request the termination of the contract due to lack of capability or interest to accomplish the project; or,
6. If the Lessee failed to respect the obligations stipulated either under this agreement or the Laws of region and the country; or,

Keewwata 15

Dhimmoota Humnaa Ol Ta’an

1. Qaamileen lamaanuu rakkina humnaa ol ta’een dirqamoota waliigaltee kana keessatti ibsaman ba’uu dhabaannaan itti gaafatamummaa irraa bilisa;
2. Jechi “dhimmoota humnaa ol” jedhamu kun kan hiikamu akkaata seera hariiroo hawaasaa Itoopiyaa lakk. 1792 fi 1793 kan bara 1952tin ta’a.

Keewwata 16

Araarama Waldhabiinsaa

Waldhabiinsi haala waliigaltee kanaan raawachuu dhabuurtiin kireessaafi kireeffataa gidduutti uumamu qaamilee lamaaniiin kan hinhiikanne yoo ta’e Boordii Investmentii naannootiin furmaata kan argatuu ta’a.

Keewwata 17

Haala Waliigalteen Itti Diigamu

1. Kireeffataan laficha kireeffate dhimma heyyamameef (karoorfameefin) oolchuu yoo baate ykn;
2. Kireeffataan lafa kireeffate akkaataa fi yeroo waliigaltee kana keessatti tarreeffamaniin hojii barbaadamerra oolchuu yoo baate; ykn
3. Heyyamni hojii fi daldalaa kireeffataadhaaf kenname seeraa fi qajeelfama irratti haala hundaa’een qaama dhimmi ilaaluun yemmuu haqamu, ykn
4. Kireeffataan qabeenya uumamaa lafichaa irratti argamu yoo mancaase (barbadeesse); ykn dhimmoota naannoo faalan yoo raawwate; ykn
5. Kireeffataan hojicha itti fufuu kan hin dandeenye (hin barbaanne) ta’uu isaa barreeffamaan yoo ibse; ykn
6. Kireeffataan dirqama isaa kan seerotaafi waliigaltee keessatti ibsaman kabajuu yoo baate;

ARTICLE 18

Applicable laws

This contract shall be governed by the law of contract stated the Ethiopian civil code and other relevant investment laws.

ARTICLE 19

Date of Commencement

1. This agreement shall be construed starting from _____ E.C and governed by relevant procedural and substantial contract laws of Ethiopia and other relevant investment laws.
2. In witness whereof the parties hereto affixed their signatures and seals in _____, on the date and year written and this contract shall be authenticated and registered by the authorized organ.

Keewwataa 18

Seeraa Raawatiinsaa Qabu

Waliigalteen Kun akkataa seera waliigaltee seera hariiroo haawaasaa Itiyooophiyaa keessatti tarreeffamee fi seerota invastiamntii kan bulu ta'a.

Keewwata 19

Guyyaa Rawwatinsa

1. Waliigalteen qaamolee lamaan gidduutti malattaa'e kun haala seera adeemsaa fi Seera haadhoo siviilii tiin kan bulu ta'ee guyyaa _____ irraa kaase hojiirra kan oolu ta'a;
2. Waliigalteen kun bakka ragoonni armaan gaditti ibsaman jiranitti qaamilee lamaan gidduutti _____ maallattaa'ee kan ragaa'uu fi galmee qaama dhimmi ilaallatuutin kan mirkanaa'u ta'a.

LESSOR (KIREESSAAF)

Name _____

Maqaa

Signature _____

Mallattoo

Position _____

Ga'ee hojii

Date _____ Guyyaa

KIREEFFATAAF (FOR LESSEE)

Name _____

Maqaa

Signature _____

Mallattoo

Position _____

Ga'ee hojii

Date _____

RAGOOTA(WITNESSES)

Maqaa
Name

Mallattoo
Signature

Guyyaa
Date

- 1. _____
- 2. _____
- 3. _____

Declaration

I, the Undersigned, declare that this thesis is my original work and has not been presented for degree in any other University and that all sources of materials used for this thesis have been duly acknowledged.

Declared by:

Name: Girma Kassa Kumsa

Signature: _____

Date: _____

Confirmed by Advisor:

Name: Muradu Abdo (Asst. professor)

Signature: _____

Date: _____

Examiners

1. Abera Dagefa (Asst.Professor) Signature: _____ Date: _____

2. Aman Assefa (Ato) Signature: _____ Date: _____

Place and date of submission

Addis Ababa University

November 8. 2011